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Where We Stand

By Albert Shanker, President
American Federation of Teachers

What Price Local Control?

The other day, I heard Congressman John Shadegg, a Republican from Arizona, talking about education on C-SPAN. Congressman Shadegg was solidly on the side of local control of education. He condemned big government as bad—in education as elsewhere—and said he believes that power over education should be taken out of the hands of bureaucrats in Washington, D.C., and returned to state and local governments. Shadegg was especially concerned about the control that he said the federal government exercises over school finances: "I'd like to see much more of the education dollars in America controlled by parents and by teachers and by local school boards."

Shouldn't we expect students to learn the same math no matter where they live?

People hearing this condemnation of big government's power over education, and perhaps applauding it, might be surprised to find out how little control the federal government now has—or has ever had—over local schools and how little money it spends for education. Our education system has always been locally controlled. In recent years, many states, dissatisfied with student achievement, have taken a bigger role in matters like curriculum and assessments, but almost all the responsibility for local schools remains in the hands of locally elected school boards.

These boards hire (and fire) teachers and administrators and set district policies pertaining to everything from promotion and discipline to who runs the cafeteria and who services the school bus fleet. In many places, they also control the selection of textbooks and curriculum and assessments. In other words, if local control is what we want, we've got it. And if local control were going to give us a world-class education system, we'd have one by now.

Exactly what kind of power does the federal government have over education? It provides just under 6 percent of the money spent by local schools (this is down from 10 percent several years ago). And its involvement is almost entirely limited to programs for special populations, like children from very poor families, who are assisted under Title I, and students with disabilities. The interests of these youngsters were being neglected by local school districts—and undoubtedly still would be if Congress had not passed laws to protect them.

There have been complaints about the intrusiveness of federal guidelines for schools accepting federal money. (Imagine the complaints if there had been no accountability over the way tax dollars were being spent.) But the trend is toward relaxing guidelines so the schools can use federal money in ways that work for them. In any case, federal guidelines, whether relaxed or rigid, make no difference to the vast majority of U.S. students, who spend their days in classrooms over which the federal government exercises no control whatever.

If we already have a system in which people at the local level are calling the shots, why aren't our schools better? Advocates of local control maintain that a system of 15,000 school boards allows flexibility, responsiveness, and grass-roots involvement. That sounds very good in principle. What our system—or, rather, non-system—means in practice is that teachers meeting their classes at the beginning of the year have no idea what students who are new to their school learned last year. And since very few school boards require any uniformity of content grade by grade, teachers may not even be certain what *returning* students covered the previous year. So they must typically spend several weeks covering material that students need to know if everyone is to start at the same point. This wasted class time helps explain why students in Japan or Germany or France often achieve at much higher levels than American youngsters.

Our non-system also makes what children learn a function of where they live. At the education summit last spring, the President and a number of businessmen and governors asked whether it is right that the kind of math that students are taught depends on whether they go to school in California or Ohio or North Dakota. Can we afford, as a nation, to let localities decide what their students will learn when this means that some of our children will be educated much better than others? Shouldn't we expect students to know the same math and be able to read and write at the same levels no matter where they live?

Those who are pushing for local control are pushing for the status quo—and that's not good enough. Many things are best done locally. Local school boards should be able to hire their employees and set salaries and make all kinds of decisions about the day-to-day running of their schools. But deciding on what students learn and how they should be assessed is not one of these things. For that, we need national—not federal—standards and assessments. It's time to put the long history of local control, which has resulted in fragmented curriculums and poor student achievement, behind us, and move on.

Mr. Shanker's comments appear in this ad under the auspices of the American Federation of Teachers. Reader correspondence is invited. Address your letters to Mr. Shanker at the AFT, 555 New Jersey Avenue, N.W., Washington, D.C. 20001. © 1996 by Albert Shanker.

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CORRESPONDENCE

"Interstitial" gaps

To the editors:

Louis Menand's review of *The Collected Works of Justice Holmes* ("Bet-Tabilitarianism," November 11) seeks to characterize Oliver Wendell Holmes's writings as a manifesto in support of freewheeling judicial activism. Nothing could be further from Holmes's philosophy than the notion that judges are free to decide cases according to their personal views.

Menand claims that Holmes's concept of the judicial function coincided with the way people think—"by the seat of their pants. First they decide, then they deduce." According to Menand, starting with Holmes's first article in 1870, "he spent the next sixty-two years as a jurist and a judge trying to be faithful to this insight." Menand bases this gross distortion on Holmes's oft-repeated principle that "general principles do not decide concrete cases." But that is not because the decision has already been made, but because of the inherent limitations of general principles.

Holmes properly rejected, of course, what has been called the "judicial slot machine" theory of the judicial process—the naïve notion that judges merely "find" or "discover" the correct decision by pulling the lever on a machine pre-loaded with all the correct answers. Do judges "legislate"? Holmes's response is incomparable: "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially" (*Southern Pacific Co.* v. *Jensen*, dissenting opinion). Filling "interstitial" gaps is one thing; but it is quite another to attribute to Holmes the view that the whole judicial process is nothing more than an elaborate window dressing for decisions previously made by the judges "by the seat of their pants." As Holmes stated, judges need "to learn to transcend our own convictions" and "it is very painful, when one spends all the energies of one's soul in trying to do good work, with no thought but that of solving a problem according to the rules by which one is bound, to know that many see sinister motives. . . ."

Menand fails to distinguish between Holmes's comments about the result-oriented origins of the early common law and Holmes's views about the function of a judge in a modern democratic society. Holmes's recognition that legal decisions are not brought by the stork cannot be turned into a brief for judicial promiscuity.

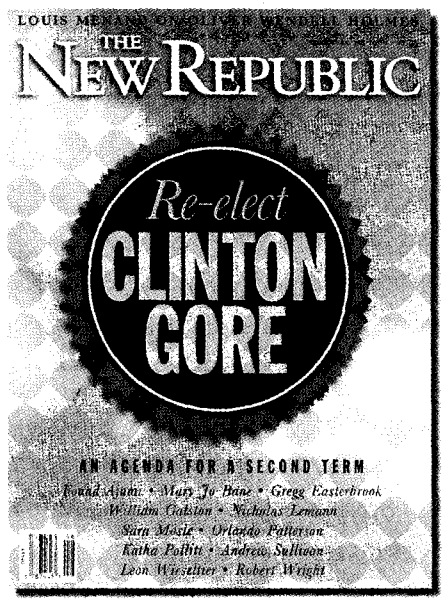
EARL E. POLLOCK
Longboat Key, Florida

Euro-trash

To the editors:

Nathan Glazer accurately lays out "the one simple factor" that explains why cities in Western Europe are "better" than even our best: Europeans "love their cities more than we do" ("It's Better in Europe," November 11).

But, somehow, after covering nearly all the bases, Glazer fails to see the most glaring consequence of Europeans' preference for urban life. Their cities are nicer—suffering less from blight and



crime—because more well-off citizens want to live in them and always have. Their choice bids up housing and other living costs that effectively ban most poorer Swedes, Germans and French—and those countries' immigrant populations—from their more desirable city centers or inner-ring neighborhoods. This is true despite often elaborate provisions for low-income housing and other state schemes to counter market pressure on living costs. And this is not a mere academic footnote to an overall urban design success story.

Anyone familiar with the crisis facing today's European urban planners could have informed Glazer that suburban high-rise slums and ethnic ghettos are a serious problem from rough outer Stockholm neighborhoods like Rinkeby or Fittja to the Lyons suburban-ghetto, Venissieux Les Minguettes, where in the last few years riots have become a near monthly occurrence. An observer needn't have read *Le Monde* every day over the last decade to know that much of the steam driving Jean-Marie Le Pen's ultra-right National Front comes from the overheated spectacle of violence and desperation in France's suburban ethnic ghettos, places far from Eiffel Tower crowds and Champs Élysées sidewalk cafés—places where ordinary cops won't even go anymore. Instead, only the militarized—and hated—riot police, the CRS, are sent there even on routine calls.

SCOTT HOLMQUIST
Berkeley, California

GOP togetherness

To the editors:

John B. Judis caught me ("Meltdown," November 11) on the New Hampshire campaign trail in a moment of candor, correctly reporting my serious reservations about the wisdom of some of my party's 1995 environmental initiatives. An opinion attributed to me about the Christian Coalition ("he doesn't like the Republicans' ties to the religious right"), however, was invented out of whole cloth, apparently to support the premise that mainstream Republicans believe that the Republican Party will be doomed unless it jettisons its conservative principles and constituencies.

Nonsense. I joined the Republican Party and won my state Senate seat in 1994 and again in 1996 because my party has become the party of grassroots energy, ideas and fundamental change. While I differ with social conservatives on abortion, they are a vital part of the Republican Party governing coalition. Social conservatives must also be credited with bringing into unmistakable focus the problems associated with America's declining moral and ethical standards.

Republican Party activists include a fractious mix of sound-currency/free-trade establishmentarians, populists, libertarians, low-tax/limited government advocates and social conservatives. Our challenge is not to doom ourselves to minority party status by building a cellar under our big tent to hide some members of our coalition. Instead, Republicans must develop and articulate our many and broad areas of agreement—which now reflect American political consensus.

JIM RUBENS
New Hampshire State Senator
Etna, New Hampshire

John B. Judis replies:

Saying I "invented out of whole cloth' his opinions about the Christian Coalition is a serious charge, and entirely unwarranted. After TNR received this letter

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I sent Rubens a copy of my notes from our conversation, including the sentence I quoted from him, "The real Republican Party is not the Christian Coalition." He replied, "Your notes look fine," but then went on to dispute my interpretation ("he doesn't like the Republicans' ties to the religious right") of that sentence. That's certainly his right, but a difference of interpretation is not what his letter suggested. I stand confidently behind everything I wrote and reported about him.

Band-Aids

To the editors:

You do not have to be a member of "the strange union of business interests, naïve libertarians and misguided left-wing urban advocates" to disagree with Orlando Patterson's advice ("An Agenda for a Second Term," November 11) to the president to tighten the screws on unskilled legal and illegal immigration in the interest of the earnings of our "low-class workers." While the evidence that the unskilled component of our current immigration hurts the wages of our workers is problematic, at best, Patterson's demand for an enhanced enforcement of sanctions on the hire of illegals (who are manifestly among the unskilled) to make their entry unprofitable is nothing less than misguided.

Patterson makes a fatal mistake, shared by the economist George Borjas, by both political parties and by even well-meaning liberals such as Father Hesburgh and the late Barbara Jordan. He assumes that the inflow of illegals can be virtually eliminated by domestic (and, for that matter, border) punishment strategies. The wage and opportunity differentials are so immense, as between us and the poor countries from which the illegals mainly come, that efforts at reducing incentives, whether by taking the illegals off the welfare rolls or ejecting their children from the schools or by imposing ever greater penalties on their employers, will yield little response.

While they do little, therefore, to reduce the illegals in our midst, these efforts only serve to drive more of them, unable to rear their heads in protest and able only to extend their hands in supplication, into the underground economy of sweatshops and exploitative work conditions that a well-meaning but ineffective Labor Secretary Robert Reich seeks to fix with Band-Aid gestures such as marching into New York's garment district with the hapless Kathie Lee Gifford. Few unions here have traditionally come to their aid, as did some empathetic German unions in support of the foreign guestworkers in the 1970s when they demonstrated with placards saying: *Ihr kampf ist unser kampf* (their battle is our battle). Instead, the demonization of the illegals has only prompted a general cry of *Mein kampf*.

Surely it is time to come to terms with this reality. Domestic enforcement has been tried without success before: that was in fact the principal aim of the 1986 Immigration Act, which introduced employer sanctions against objections that they could not work. The only policy that combines decency with sense is then to remove the illegals from the political radar screen, freezing domestic enforcement instead of expanding it. Once the illegals get past the border, we ought to rein in, rather than enhance, the harassment and penalties that produce misery and no results.

But I believe that this must go hand in hand with stricter enforcement at the border itself. Not that even the border enforcement can be particularly effective. The Rio Grande could be fenced up, a ditch dug, the army deployed, all at great cost along the huge border, and we may optimistically hope to dent the flow from Mexico. But how do we effectively stop the illegals who arrive on legal short-term visas and then get lost in our land? They already number close to 60 percent of the estimated illegal inflow.

The best defense of border enforcement (which Patterson dismisses as ineffective while accepting uncritically the assumption that domestic measures will work instead) is simply that the government must show, despite the stark reality that immigration is increasingly beyond control, that it is doing something to control it. And that something has to be a policy that creates the maximum such illusion at least cost in terms of our traditions of liberty, justice and fairness. Domestic enforcement measures, whether directed at illegals or at employers, do worst in this regard; border enforcement measures do best. The policy choice is both obvious and the opposite of what Patterson wants.

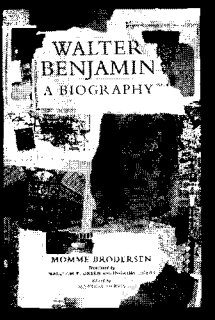
JAGDISH BHAGWATI
New York, New York

Nailed

To the editors:

There is only one thing in all your issue of November 11 worth reading and that is Leon Wieseltier's "Do Everything." At last Bill Clinton ... nailed. As for Jeffrey Rosen, he asks if he is alone in "suspecting that Clinton is not merely the lesser of two evils, but by far the most impressive president that those born after the death of JFK have known?" Yes.

F.E. REGAN
Grafton, Massachusetts



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FROM WASHINGTON

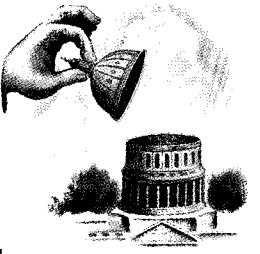
The script

There is a ritual, so familiar it would be tedious if it were not so horrid, to the way it goes these days with accusations of racially insensitive speech. The terrible charge is leveled. The accused attempts, feebly, to defend himself. He says he never said what is alleged, or that he was trying to make a joke, or that he didn't mean it, or that his words were taken out of context, or that it is unfair to destroy a person's life over a single utterance. His breath is of course wasted. The guardians of these things demand severe punishment, and severe punishment is meted out—generally, the sinner is banished from decent society, although sometimes he is allowed to remain in a limited role following re-education (traditionally in the form of a special episode of "Nightline") and expiation (again, traditionally, with Larry King). Also, generally, at a certain point in the proceedings, Jesse Jackson and Al Sharpton and Kweisi Mfume appear and demand large amounts of cash and/or jobs from whatever white institution has the misfortune to be associated with the miscreant. The institution ponies up, announces it is hiring a diversity consultant and grovels.

As I say, there is a certain predictability to the script. But the case of Texaco breaks new ground. Here we have finally arrived: even proving that the accused did *not* utter the offending remark turns out to be no defense. To be accused of having said the thing is enough. One man's "nigger" is another man's "Nicholas."

To briefly recap: On November 4, a front-page story in *The New York Times* by Kurt Eichenwald informed the world that senior executives of Texaco Inc. had "bantered comfortably among themselves" in an August 1994 meeting, "planning the destruction of documents demanded in a Federal discrimination lawsuit and belittling the company's minority employees with racial epithets." The *Times* based this accusation on a tape recording of the meeting secretly made by one of the participants, Richard A. Lundwall. The *Times* said that the tape revealed Robert Ulrich, then Texaco's treasurer, referring to black employees who had filed a racial discrimination suit against Texaco as "black jelly beans," and "in a sentence laced with expletives ... complaining how 'niggers' had caused difficulties." The story also said that the tape captured both Lundwall and Ulrich discussing their desire to destroy documents that could prove damaging to Texaco in the discrimination lawsuit.

The claim that Texaco executives had been recorded uttering racial epithets was instantly accepted by many readers, including Peter I. Bijur, Texaco's chairman. Within hours of the story's appearance, Bijur issued a statement condemning his former employees for "the rank insensitivity demonstrated in the taped remarks reported in today's *New York Times*." The *Times* kept up the heat. Apparently untroubled by any concerns for due process or civil liberties in the case of an unproven accusation, the paper issued an editorial stating as a fact that senior executives, including "Ulrich, freely deride black employees as 'niggers,' and 'black jelly beans,' " and demanding that Texaco "make an example of all those who uttered racist comments at the meeting." Over the course of the next several days, the *Times* ran prominent follow-up stories repeating the accusation over and over. "Senior Texaco executives can be heard referring to minority employees as 'black jelly beans,' and 'niggers,' " Eichenwald wrote in a typical passage on November 5. End of Act 1.



On November 5, the Leadership Conference of Civil Rights asked the federal government to join the suit against Texaco; on November 6, the company announced that Ulrich and Lundwall, both retired, would have their retirement benefits denied them, and that two current Texaco executives who took part in the offending conversation had been suspended. Also, the company hired A. Leon Higginbotham, Jr., a former appeals court judge who has gone into the race consulting line. On November 7, the NAACP called for a Justice Department investigation into Texaco for possible violation of federal civil rights laws. On November 10, the *Times* ran an article by Eichenwald, "THE TWO FACES OF TEXACO," that repeated the accusation that Ulrich had been "caught ... deriding black employees as 'niggers,' " and that assured readers that "documents ... indicate that Texaco has a long way to go in promoting members of minority groups and in assuring that its workplace is free of hurtful racism." The first piece of evidence to this effect cited by Eichenwald: "African-Americans make up some 12 percent of the United States population, but of the 873 executives at Texaco who make more than $106,000 annually, only 6—or 0.7 percent—are black." (Asked how many black *Times* employees made more than $106,000 per year, and what percentage this number constituted of the total number of *Times* employees making more than $106,000, *Times* spokeswoman Nancy Nielsen said, "that kind of personnel information is internal." Eichenwald responded by saying, "I don't know; you'd have to ask public affairs," and then went into a furious off-the-record tirade.) End of Act 2.

On November 11, Eichenwald reported in a front-page story that made only some editions of the *Times* that an expert analysis of the infamous tape recording had shown that no Texaco executive had said the word "nigger." Ulrich, in complaining about multiculturalism in the corporate world, had said, "I'm still struggling with Hanukkah, and now we have Kwanzaa. I mean, I lost Christmas. Poor St. Nicholas, they shitted all over his beard." Ulrich's "Nicholas" had appeared to some ears as "nigger," but, Eichenwald acknowledged, rather delicately, it was now clear that this was "an aural illusion." As for the black jelly beans, it turned out Ulrich had been referring to an analogy taught to him by, of all people, a diversity trainer previously hired by Texaco: "I've heard this diversity thing, we don't have black jelly beans and green." In short, while the tape does catch Texaco executives talking about destroying damaging papers in the discrimination case, it simply did not demonstrate racism. End of Act 3.

Epilogue: Everything continued exactly on script. On November 13, Jesse Jackson led a call for a national boycott of Texaco. Kweisi Mfume explained that it was actually *worse* that no one had said "nigger": "The pain from these new words ought to run even deeper than before for those who feel it, because the intent runs even deeper.... The pain is still there, the intent is still there, even if the word 'nigger' is not." On November 15, Texaco settled its discrimination suit for $176 million. Jackson said the boycott would continue.

MICHAEL KELLY

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THE NEW REPUBLIC

DECEMBER 9, 1996

BALANCING ACT

Last year the Balanced Budget Amendment failed by one vote in the Senate. Since then the Republicans have gained two seats, President Clinton has revised his stance from qualified opposition to unintelligible tepidity (then back again), and it looks like the amendment will finally make it through Congress. But, while the clamor to graft this abomination onto the Constitution has grown louder over the past few years, its intellectual rationale has deteriorated further.

Why are budget deficits bad? Because there are only two things you can do with money: spend it (current consumption) or save it (future consumption). When the government runs a deficit, it borrows money from the pool of savings and converts it into spending. A permanent budget deficit is a symptom of a nation fattening its current consumption at the expense of future consumption. Balancing the budget serves no end in itself. Its purpose is to increase the proportion of money we save.

Unfortunately, politicians have a hard time convincing people to forgo current consumption. So fans of the amendment argue that the legal constraint of a balanced budget—never mind that it's judicially unenforceable (see "The Most Dangerous Branch," TNR, February 27, 1995)—would force the president and Congress into fiscal responsibility.

That hypothesis used to be conjectural. It has since been tested and proved wrong. Last year congressional Republicans committed themselves to a seven-year balanced budget, and the president followed suit. But look what they produced. The GOP filled its plan with gimmicks like one-time sales of federal assets, or tax cuts designed to lose revenue only after the magical seventh year. And both Clinton and the Congress employed the trick of promising large future cuts in non-defense discretionary spending, the sixth of the budget that Congress doles out every year. (The other kind of spending is entitlement spending, money the government dispenses automatically.) Discretionary spending includes the essential work of government—air traffic control, the Coast Guard, education, etc. Yet it's an irresistible target for unscrupulous budgeters. Since all the discretionary money is lumped together you don't have to specify which programs get chopped. You only need to shrink the overall pot and let future Congresses make the tough choices.

Not surprisingly, then, Clinton and the Republicans proposed to slice the discretionary spending pot by more than one-fifth. Assume for a moment that cuts of this size were possible—a big assumption, since we're not about to do away with, say, the Coast Guard. Half of discretionary spending funds investments in physical or human capital, programs like HeadStart and the National Science Foundation. Cutting these areas would undermine the very purpose of balancing the budget—having more money for investment. The past year shows that the constraint of a balanced budget doesn't induce political courage. Elected officials will still avoid short-term sacrifice. (Yes, Republicans rightly took on Medicare, but only so they could offer the immediate payout of a tax cut.)

So how did Clinton and the Congress manage to duck responsibility? By setting a target—zero deficit in seven years—that's actually peripheral to the goal of fiscal stability. Although the GOP turned seven years into a symbol of budgetary machismo, it isn't very hard to cook the books so that the deficit temporarily dips below zero in seven years. It seems at first blush a perverse notion, but balancing the budget in twenty years, after the baby-boomers start soaking up Medicare and Social Security, is much harder. A seven- (or five-, or ten-) year plan makes it possible to evade the hard question that is actually at the center of the budget debate—the future of entitlements—in favor of the discretionary spending dodge.

And the zero deficit is something of a fetish. The size of the federal deficit is simply a lever to adjust our national ratio of consumption to saving. A zero deficit doesn't always leave us with the ideal ratio. During the Depression, Americans saved far too much. Today we need to ratchet up the savings ratio—perhaps through budget *surpluses*. And when the demographic crisis hits, we'll need to lower it. Amending the Constitution to lock in a zero deficit (or any other level of deficit) makes no more sense than amending it to lock in interest rates or foreign aid.

Amendment proponents speak in irritatingly sanctimonious tones of their concern for future generations. They could wreak no greater budgetary havoc on their children and grandchildren than by deciding we have discovered the one true fiscal policy, for now and forever. •

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NOTEBOOK

ALL UNGREAT THINGS LARGE AND SMALL: This is Cornel West of Harvard, empath extraordinaire, in his foreword to a collection of firsthand accounts by Bosnian and Croatian refugees that has just been published by University of California Press: "As we approach the end of this ghastly century, we wonder whether we can hold on to those ideals—or illusions?—that give such meaning, purpose, and order to the wretched world we inhabit. Nearly 200 million fellow human beings have been murdered in this dreadful century in the name of some vicious ideology. Nazism at the heart of so-called civilized Europe. Stalinism at the core of the so-called emancipatory Soviet Union. European and Japanese imperialism in Africa and Asia. Patriarchal violence in the domestic sphere. Homophobic attacks in public places." And runway delays at Logan during rush hour. West is always presenting himself as an enemy of discrimination. We believe him.

REALITY GULF: No doubt, the Pentagon has not handled the cranky Gulf war veterans smoothly. The soldiers complain they are "tired," "achy," they can't sleep. One says his vomit glows in the dark. They were exposed to nerve agents in the Gulf, they insist, and the agency covered it up. After a year of denial, the administration finally admits that some troops may have been exposed when they blew up a munitions dump at Khamisiyah, Iraq. To rebuild their credibility, the Pentagon brass hires Guy Smith IV, a man who flacked for Philip Morris for fifteen years and brags on his résumé of taming the media on "numerous factory accidents involving employee death." All pretty embarrassing. But bad form aside, the Pentagon turns out to have been right. Five independent studies, including two published in this month's *New England Journal of Medicine*, prove Gulf war veterans' death and hospitalization rates are not appreciably higher than those of other soldiers. The Gulf war soldiers did have a slightly higher death rate, but this was due entirely to car wrecks. One researcher says that, even if the troops were exposed, the number of molecules released was too small to have had any effect. No matter. The veterans are still suspicious: "At every step of the way they've been lied to," carps one Pentagon critic. And he is backed by none other than the Presidential Advisory Committee on Gulf War Veterans' Illnesses, which even after the new studies insists on including in its final draft that the Defense Department "did not act in good faith." Feel that pain; Secretary Perry, call Professor West.

HOLY MORATORIUM, BATMAN: The December issue of *Batman*, titled "Death of Innocents: The Horror of Landmines" opens with the news that one of Bruce Wayne's employees, along with the employee's daughter and friend, are missing in Kravia, a country "in the midst of domestic upheaval." Two of the missing are presumed to have been killed by a landmine explosion. Alfred, Bruce Wayne's faithful manservant, spurs Master Bruce to action by telling him the situation requires a rescuer who is "resourceful, courageous" and "who perhaps lost his own family to violence." Which is to say ... nanananananana-na—Batman! Cloaked in black hood and cape, the Dark Knight heads to Kravia. But after forty-nine pages and the obliteration by landmines of a father, two little girls and one dog, the Caped Crusader is unable to stop this menace to mankind. It's odd enough for a superhero to fail so woefully at thwarting evil. Odder still is the comic book's introductory essay (comic book? essay?) in which real-life Senator Patrick Leahy of Vermont argues the case for banning landmines, these $2 bombs, "the size of a can of shoe polish ... [that] can pulverize a child." Apparently the world of comics and the world of politics are more closely connected than you might think. Several months ago, as it turns out, Leahy, a devoted Batman fan, and an ardent opponent of landmines, called a meeting with U.N. Ambassador Madeleine Albright and the president of DC Comics, Jenette Kahn. The senator wanted Batman's help in promoting a U.S. resolution aimed at eliminating antipersonnel landmines, which the U.N. General Assembly will vote on this month. Actually, it would probably take a superhero to eradicate landmines. Meanwhile, maybe *Batman* readers—teenage boys and men who act like teenage boys—will mysteriously prove of help.

THE LAST OF THE JUST: "One of the things I would urge you to do, remembering [sic] what happened to Mr. Jewell in Atlanta, remembering [sic] what has happened to so many of the accusations over the last four years made against me that turned out to be totally baseless."
—President Clinton, responding to a reporter's suggestion that he is stonewalling about Democratic National Committee fund-raiser John Huang.

PROVE IT: One drill sergeant has sex with four of his female trainees; he admits it, apologizes and goes to jail. Another is accused of raping three women under his command, sodomizing two privates and sexually assaulting two others in what turns out to have been something of an initiation rite at Aberdeen Proving Ground, an army training center in Maryland. You might feel sorry for these young women, far from home, and at the mercy of unscrupulous commanders. But then you'd be focusing on the wrong victims. "I definitely think it's racial, and they are looking for a scapegoat," Janice East Grant, president of the Harford County branch of the NAACP, told *The Washington Post*. "Historically, when black men are involved intimately or sexually with white women, the black people have been wrongly accused." Forgetting for a moment that the military is the most integrated institution in America, isn't this excuse getting tired? A few sergeants have admitted they preyed on their trainees, among whom, surely, more than a few are black. •

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The humanitarian mission that wasn't.

ABORT MISSION

By David Rieff

If it had any sense at all, the international community would be thanking the Rwandan government for resolving the refugee crisis in Eastern Zaire. Since the summer of 1994, when 1.2 million Rwandan Hutus fled from the Tutsi-led Rwandan Patriotic Front into refugee camps in Zaire, aid workers, diplomats and U.N. officials have insisted that the situation could not go on indefinitely. Sooner or later, they reasoned, the camps would have to be closed. And yet, until the Rwandan government took matters into its own hands last month—backing an insurrection in Eastern Zaire that broke the Hutu militias' hold over the camps—the situation remained frozen. Now, more than 500,000 refugees have poured back into Rwanda, and the Office of the United Nations High Commissioner for Refugees (UNHCR) has announced that, whether or not the other half million follow, it will not reopen its camps in Zaire.

Remarkably, this enormous step toward the resolution of the refugee crisis has been greeted, in many quarters, with consternation. For most of the past two years, the refugee camps remained a secondary concern in the U.S. and Europe. But when the Rwandans and their local allies attacked in November, dispersing hundreds of thousands of refugees into the Zairean countryside with little food or water, Western governments became interested.

The French were first to call for a military intervention on humanitarian grounds. Paris's ally, Boutros Boutros-Ghali, had already demanded the Security Council authorize a force. But the Rwandan government, mindful of France's support for the old genocidal regime, flatly rejected French participation. And, haunted by Somalia, the Clinton administration was not only unwilling to commit U.S. forces, but reluctant even to provide the airlift capability without which moving between 5,000 and 10,000 troops and equipment halfway around the world would have been impossible.

At this point, Canada, whose military has for some time viewed humanitarian actions as a justification for its post-cold war existence, volunteered to lead the mission. But Prime Minister Jean Chretien, his self-aggrandizing talk of his country's "great moral authority" notwithstanding, was noticeably vague about what the force would actually do. The mission, the Canadians kept insisting, would be strictly humanitarian. It would not disarm the Hutu militias; it would not establish control over the refugee camps; it would not forcibly repatriate Hutu refugees to Rwanda. With these constraints, it is difficult to see, had the Rwandans themselves not attacked the camps and driven most of the Hutu militias into the bush, what the Canadian-led international force would have been able to accomplish. It could hardly have entered the camps without a fight, and yet the Canadian minister of defense had ruled out a fight.

When these objections were raised, defenders of the mission responded that, in Prime Minister Chretien's words, "to not act at all would be immoral." His assumption, largely shared by governments, the U.N. and the aid agencies, was that action meant military action. In reality, even assuming the looming humanitarian catastrophe was as enormous as aid workers and U.N. officials on the scene suggested, there were other options. Alain Destexhe, former secretary-general of the Brussels-based aid group Doctors Without Borders, was among the few to argue that Western military intervention in Zaire would solve nothing. Instead, he suggested a humanitarian deployment inside Rwanda, which could offer the refugees food, temporary shelter and medical attention should they decide to voluntarily return home.

On the ground everyone knew a militarized humanitarian mission would work only if it went further than what the Canadians envisaged and temporarily took control over the region, disarming the Hutu militias and establishing international control in their stead. As Paul Stromberg, the UNHCR spokesman in Kigali, put it, "disarming is the first step." Humanitarian agencies like Doctors Without Borders and advocacy groups like the Washington-based Refugees International also hoped for a far more ambitious mission. Joelle Tanguy, executive director of Doctors Without Borders U.S.A., suggested in a letter to *The New York Times* that the mandate for the proposed military intervention was "too narrow to address three underlying problems in the region: the presence of genocide perpetrators among those receiving assistance; the extreme insecurity in Burundi; and Rwanda's failure to create the judicial structure and security conditions necessary to insure the safety of its returning refugees."

Why the aid agencies pushed so hard for an intervention that would have subverted the authority of the Kigali government, and established, for all intents and purposes, a protectorate in Eastern Zaire, is hard to fathom. After all, this major political intervention for which the aid agencies called was simply unnecessary.

If it was a political resolution the agencies wanted, the Rwandan government's defeat of the Hutu militias and destruction of the camps was already providing it. The agencies were understandably appalled by the brutality with which the Rwandans struck and their seeming indifference to the attack's effect on the refugees. But the idea that one could conjure a political solution in the Great Lakes region of Africa that didn't involve fighting was never realistic. The lesson of the previous two and half years was that international diplomacy had failed, and the hard reality of the world is that when diplomacy fails the only recourse is the battlefield.

The agencies knew this as well, but since they also

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have mixed feelings about the Rwandan regime, which many believe has a terrible human rights record, they hoped instead for what amounted to an international military takeover of the region. The Rwandans understood this and in mid-November acted decisively, launching a military push that broke up the Magunga refugee camp, the last Hutu militant stronghold. With the refugees having moved by the hundreds of thousands back to Rwanda, the point of an international military intervention is largely vitiated. Any deployment will be greatly scaled back, much to the satisfaction of the Rwandan authorities.

That is probably just as well. The militarization of humanitarian relief operations, however much sense it may make in practical terms, is more dangerous to both the moral credibility and the long-term effectiveness of the humanitarian aid movement than many of even its best practitioners yet understand. Taking control of an area by force can often be justified by the higher moral imperative of saving lives. But it is worth recalling that such justifications have a history and were used, notably in Africa, to justify the colonial impulse in the nineteenth century. This does not mean they are always wrong, but they should, at the very least, inspire caution. •

BANJA LUKA POSTCARD

FEEDING THE BEAST

By Anna Husarska

This freedom of the press thing can get pretty strange. The other day Milovan Milutinovic, the spokesman for the indicted war criminal Ratko Mladic, asked for my help. It seems that Milutinovic has been having trouble getting his broadcasting station, Radio Krajina, duly registered in Republika Srpska, the self-proclaimed and quasi-recognized Serb statelet in Bosnia. Yet another indicted war criminal has accused Milutinovic of stealing radio equipment from the Srpska Krajina, the self-proclaimed, never-recognized (and now-defunct) statelet made up of Serbs from the Krajina region of Croatia. The case presented several problems; the criminal records of the main players and their countries were only the beginning.

Frankly, Milutinovic's request surprised me. For one thing, he hasn't exactly been a lifelong devotee of the press and its liberties. For another, I'm one of the last people he ought to be asking for a favor. Back in 1992, at the height of ethnic cleansing in Bosnia, the then-Major Milutinovic, head of the Republika Srpska military press center in Banja Luka, gave me exactly three hours to get out of town. I'd been poking my nose into the atrocities committed by Bosnian Serbs there, and, in those days, Milutonivic hadn't heard of freedom of the press (see "City of Fear," TNR, September 21, 1992).

But things have changed here—sort of. Now, instead of the boot, Milutinovic is giving me booze at the Bosnian Serb Army premises (from which he broadcasts) because I work as a political analyst with the International Crisis Group (ICG), an organization monitoring the implementation of the Dayton Peace Agreement in Bosnia. And, although I know this sounds improbable, Milutinovic's very own Radio Krajina is widely considered to be a major dissenting voice in Republika Srpska. (It boasts an "open microphone" call-in show, which actually allows people of diverse political persuasions to speak, and it broadcasts news in addition to the dreary propaganda put out by Pale. It doesn't take much to be a major dissenting voice in Republika Srpska.) Milutinovic's dissident credentials have been boosted by the games the authorities play with him: using a commercial broadcast called Radio Big as a jamming tool, they chase him up and down the dial. Now Milutinovic had been refused registration by the minister of information of Republika Srpska, and he figured maybe I could do something about it.

But I had more pressing problems on my hands. In the immediate aftermath of September's unfree and unfair elections in Bosnia, the emboldened authorities of Republika Srpska clamped down on the opposition (or what goes by that name here) and muzzled all the independent print media. In some small way, I felt responsible for what had happened to them.

Last summer, in my capacity with ICG, I became involved in a sort of one-woman freedom of the press crusade. Specifically, I was trying to help independent journalists launch a daily newspaper in Republika Srpska (well, more like nagging them to do it). I was not entirely successful in the role of mother of the modern media. On the first day of my assignment as an ICG field officer in Banja Luka, I had my car stolen by thugs, at gunpoint, and was confined to the area that I could cover by foot or secondhand bike. Still, I persevered. The idea was to provide some information other than what comes out of *Glas Srpski*—the mouthpiece of the Serb Democratic Party, i.e. Radovan Karadzic's nationalists. In the back of my mind were the underground publications that had animated the Polish revolution, and their successor, *Gazeta Wyborcza*, the "electoral daily" that we launched a month before Poland's first partly free and fair elections in June 1989.

Well, I quickly learned that Republika Srpska isn't Solidarity and that Srpska's *Gazeta Wyborcza* is a long way away. The journalists from the weeklies *Novi Prelom* and *Nezavisne Novine* whom I approached in Banja Luka were reluctant or evasive on the subject of launching a daily.

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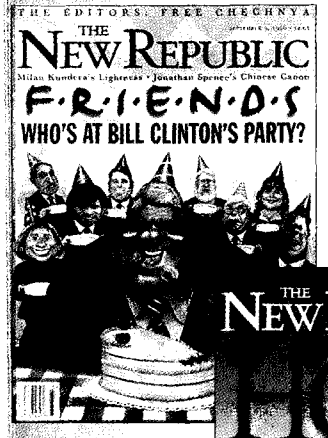

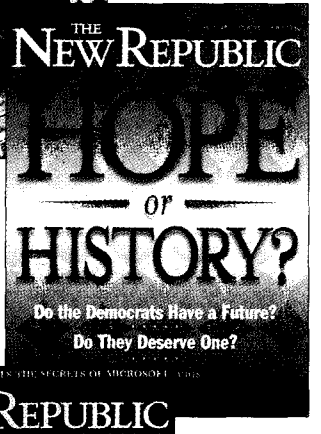

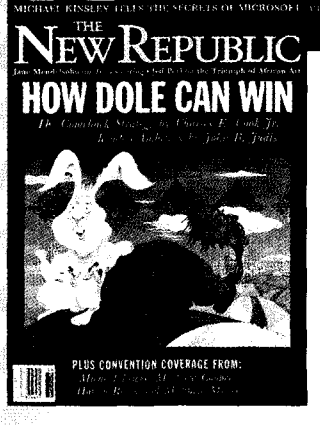

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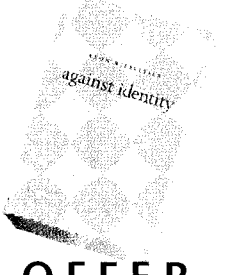

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Besides, *Novi Prelom* is more of a forum for intellectual elites than a news organ, and *Nezavisne Novine* is all scoops and scandals plus a fuzzy black-and-white nude on the back cover. Not your obvious Pulitzer winners. The other weeklies in Republika Srpska, *Panorama* from Bijeljina and *Alternativa* from Doboj, are more informative, but, since they were only launched in May of this year, they can't yet be expected to switch to a daily format. And the journalists I was pestering were either afraid of provoking the ire of the Karadzic crowd or else suspicious of a foreign sponsor that would discredit them with the local, anti-Western readership. (Invoking my Slavic soul and drinking liters of slivovitz and coffee with them helped to break only some of the ice.)

In the end, after three weeks of banging my head against the wall, I left with bumps all over and very depressed. It was a happy day when, on a visit back here in late August, I saw the *Nezavisne Novine* daily at the kiosks. It was as similar to *Gazeta Wyborcza* as it could possibly be. "The idea was born in this crazy head here," said editor-in-chief Zeljko Kopanija, poking my temple with a sharp forefinger.

Still and all, the impact *Nezavisne Novine* had on elections was probably minimal. It emerged when there were only four weeks of campaigning left, which even in a normal country would be too short a time to make much of a difference. And Republika Srpska isn't exactly a normal country. Since the elections, the prospects for a viable, truth-telling daily have faded even further. Although none of the basic conditions set by the international community for the elections in Bosnia and Herzegovina was met, the polling went ahead and was certified as valid. Now the authorities of Republika Srpska have even less reason to respect freedom of the press or any other such abstract concept. In October, *Nezavisne Novine* was told by the *Glas Srpski* printing house that for technical reasons it would not be printed anymore. The plant is part of the same company that publishes the *Glas Srpski* newspaper, and both are under the control of the nationalist Serb Democratic Party. *Nezavisne Novine* was forced to drop its admirable new daily edition and to send its weekly edition to Belgrade for printing. When Doboj's *Alternativa* published a protest, it was added to the blacklist, not a great surprise. *Alternativa*—like all the other papers that are at least trying to do their job in Srpska—is generally and variously harassed. Two of its editors, Zivko Savkovic and Pavle Stanisic, are on trial, accused of libel: they published an article pointing to the ruling Bosnian Serb party's involvement in plotting to obstruct an opposition meeting.

The *Alternativa* case is far from a cause célèbre abroad. In Republika Srpska, however, it is rather well known. When a local radio station announced the other day that Pavle Stanisic was on trial, a friend of Stanisic's misunderstood the broadcast. He thought the editor had already been sentenced, and rushed to the city jail to see him. When he got there, one of the guards set him straight. "Mr. Stanisic? Not here," the guard said, "not here." He paused. "Well ... not here yet." •

Benazir Bhutto, at home and abroad.

PINKY'S PUSHOVERS

By Peter Beinart

By most accounts, Benazir Bhutto accomplished almost nothing during her two stints as Pakistan's prime minister. She passed her days in power in traditional ways: she jailed opposition leaders for corruption while appointing her own relatives to high office; she sabotaged the judiciary's effort to wriggle free of ministerial control; she scorned plans to tax her fellow land barons; she surrendered a third of the budget to the military in the hope that the generals would not respond to widespread charges of government venality and incompetence by rising from their barracks. When Pakistan's president dismissed her for the second time last month, not one city block rose in protest. In poor neighborhoods of Lahore and Karachi, residents distributed candy.

But Benazir Bhutto's record will be emulated nonetheless—not because of the way she represented Pakistan at home but because of the way she represented it abroad. At a particular kind of diplomacy, Benazir Bhutto proved herself a master. At a time when U.S. policymakers began insisting that Third World leaders no longer sing for their foreign aid supper with the same reheated cold war rhetoric, Benazir improvised new tunes—democracy, feminism, Islam—to dazzle divergent American audiences, con Congress and keep the money coming. No doubt her work is already being studied across the post-colonial world.

In superpower clientship, Pakistan has long produced the state of the art. Conscious from its birth in 1947 that it needed external support to avoid Indian domination, it consistently outhustled its larger neighbor for American affection. While India played hard to get, pledging non-alignment and rejecting invitations to head a pro-Western regional alliance, Pakistan frantically batted eyelids at the Truman and Eisenhower administrations. After initial rejections, the U.S. took Pakistan up on its offer of an anti-Soviet security pact in 1954. Over and over during the three decades that followed, Islamabad's high command regaled American delegations with prophecies of Soviet troops pouring south to threaten the oil fields of the Middle East, only to be stopped at the Khyber Pass by brave little Pakistan. And with the money and weapons America sent to prepare for that looming eventuality, Pakistan's ruling generals paid off restless constituencies at home and even took a couple of (unsuccessful) shots at dislodging beloved Kashmir from India's clutches.

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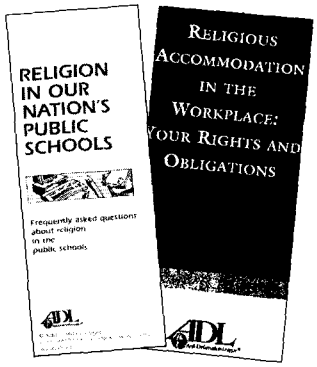
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Pakistan never enjoyed greater anti-communist cachet than in the early 1980s, when its support for the mujahedin rocketed it to third on the list of American aid recipients. But by 1988, with Gorbachev pulling troops out of Afghanistan, General Mohammed Zia ul-Haq, a crude old school cold warrior, no longer knew how to hold America's interest.

Enter Benazir Bhutto. Winning election in November 1988, on the cusp of the liberal outbreak that would seize Eastern Europe and much of the Third World, she foresaw a new criteria for American favor: democracy. At home, her civil libertarian instincts were less than exemplary: weeks after taking power she dismissed the regional assembly in the state of Baluchistan after it voted no confidence in her local cronies. But in June 1989 she set off for Washington to sell herself as the embodiment of democracy's promise in the Muslim world. Americans bought. The trip left *The Los Angeles Times* talking of "Benazir mania" and "an international cult following." Peter Galbraith, later U.S. ambassador to Croatia, compared her address at Harvard commencement, in which she proposed an Association of Democratic Nations, to George Marshall's 1946 call for a plan to aid war-ravaged Europe. And after she explained Islam's "very strong democratic ethos" to her fellow Harvard alums, *The New York Times* dutifully called her a model of "democracy and moderation in an Islamic world that can benefit from examples of both."

The prime minister also portrayed support for her government as an act of solidarity with international womanhood. Her speech to a joint session of Congress was a virtual seminar in the political use of identity: "As a representative of the young.... As a representative of women, let my message be 'Yes, you can.' And as a believer of Islam...." Meanwhile, Asma Jahangir, chairman of Pakistan's Human Rights Commission, described her support for women's rights as "lip service."

But Benazir (sometimes referred to in the American press by her Harvard nickname, Pinky) didn't just appeal to liberals. Her speech to Congress, in which she quoted George Bush, Abraham Lincoln, James Madison and John Kennedy and spoke of "the battle for freedom next door in Afghanistan," reportedly brought tears to the eyes of ultra-hawk New Hampshire Senator Gordon Humphrey. When Benazir left Washington, she had cemented Pakistan's perch just below Israel and Egypt on the American aid hierarchy and secured a controversial purchase of F-16s, although the original justification for both the aid and the planes had been to contain a Soviet threat now clearly on the wane. The *Times* even editorialized that, "She has also gained, and merits, the benefit of the doubt on her assurances that Pakistan does not intend to develop nuclear weapons," despite the fact that six days earlier the director of the CIA had briefed the prime minister on her country's extensive efforts to do just that.

After a twenty-month stint that included not a single legislative accomplishment, Benazir Bhutto was out of power. But in October 1993, capitalizing on disillusionment with her chief rival, Nawaz Sharif, she squeaked back into office. Benazir soon found her old groove: scheming to take control (allegedly by bribing MPs) of an opposition-controlled state legislature, banning six opposition newspapers, lavishing $1 billion on a trio of French subs and appointing her husband (nicknamed Mr. Ten Percent for his alleged corruption) to the Cabinet. This March, while Pakistan's Supreme Court ruled whether Bhutto could fire judges without its consultation, state police raided houses belonging to the Chief Justice's family, leading a Western diplomat to tell *The Far Eastern Economic Review* that the prime minister was in "a state of open war with the country's senior judiciary."

Back in Washington, though, Benazir could still work her magic. This time she reportedly portrayed herself, in a heart to heart with Bill Clinton, as the only thing standing between Pakistan and a government of Iranian-style Mullahs. In response, Clinton let Pakistan receive $368 million in weaponry whose delivery George Bush had frozen over concerns about Pakistan's nuclear program.

That, however, would be the queen of clientship's swan song. America's vote of confidence notwithstanding, Pakistan's president sacked Benazir Bhutto again last month. It was the usual domestic failures (in Bhutto's second term the good government group Transparency International voted Pakistan the world's second most corrupt country) that did her in. But, ironically, the decision also seems to have been influenced by a foreign power. Bhutto failed to privatize important industries, didn't keep the budget deficit in check and allowed foreign reserves to slip to crisis levels. As a result, she violated the terms of two macroeconomic stabilization loans and enraged the one international actor on whose favor Pakistani leaders depend more than the United States: the International Monetary Fund. •

ON THE HILL

SMALL CHANGE

By Jeffrey L. Katz

All summer long, as liberals stared at him accusingly, Bill Clinton vowed to make the welfare bill they hate palatable—after the election. "I think it can be easily fixed," he said on July 31, moments before Congress passed legislation ending the 61-year-old federal guarantee of relief to poor women and children.

Actually, it won't be easy at all. The November elections reaffirmed the GOP's control of Congress, and ended any faint hope liberals may have had that the pro-

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cess of devolution set in motion four months ago could be reversed. "The truth of the matter," admits New York liberal Charles Rangel, "is that the genie's out of the bag."

And, in fact, Clinton never really promised to restore welfare as an entitlement or return the federal government to its role as chief arbiter of how to treat the poor. What he actually pledged to do if re-elected was more limited. He committed himself only to reversing a handful of the welfare law's more controversial measures. The law as it stands allows states to cut current legal immigrants off Medicaid and virtually requires they deny public health benefits to future ones. Bill Clinton seems to want legal immigrants, present and future, to remain eligible. He would also like to make it easier for legal immigrant children, as well as elderly and disabled newcomers, to receive Supplemental Security Income (SSI). And the administration opposes provisions that make it much harder for able-bodied adults without dependents to receive Food Stamps unless they work.

Such changes are achievable, if Clinton fights for them during upcoming budget negotiations. But even they will prove difficult. Most of the $54.6 billion the welfare law saves over six years comes not from the block granting of Aid to Families with Dependent Children, but from cuts in Food Stamps and aid to legal immigrants—the very provisions the administration is trying to revise. The Food Stamps cuts save about $23 billion through 2002, the immigrants provisions about the same, though there is some overlap. (The biggest savings among legal immigrants come from restricting access to SSI, which provides cash to the low-income aged, blind and disabled.)

Any restoration of Food Stamp or SSI money would have to come as part of an overall budget deal and be paid for by savings elsewhere. Mark Greenberg, a senior staff attorney at the liberal Center for Law and Social Policy, isn't optimistic. To restore the money, he says, "there has to be a strong sense that there's something needing fixing. And probably not enough has happened yet to change the views of those who thought this was a good bill in the first place."

In addition to restoring cuts in Food Stamps and SSI, Bill Clinton has pledged he'll get Congress to give states more money for the expensive task that this bill assigns to them—moving people into jobs. The new legislation requires the states to ensure that half their welfare caseload is working by fiscal 2002. But the Congressional Budget Office doubts states will meet the work requirements and predicts they will find it cheaper simply to eat the federal penalties for failing to do so. The result would be a liberal's nightmare—people disqualified for public assistance after the new five-year cutoff and left to fend for themselves.

Bill Clinton has proposed designating two pots of money to help states meet the work requirements. The first, worth $3 billion over three years, would give them money to spur job creation for welfare recipients or to reward private job placement agencies for having done so. The second, worth about $400 million over four years, would provide tax credits of up to $10,000 for wages, training or education for long-term welfare recipients.

GOP moderates have long seemed amenable to increased funding to help employ the hard-core unemployed. But in July, Republican House and Senate conferees quickly discarded a similar $3 billion fund designed to help states do exactly that.

Whether the Clinton administration and its allies will be any more successful this time depends partly on whether they win the backing of the nation's thirty-two Republican governors, a group that last year exercised considerable influence in the drafting of welfare reform. As one Democratic congressional aide puts it, the Republican governors are going to have to go to their own party's leadership and say, "I understand the rhetoric during the campaign, but here's the reality," that more federal money is needed to get welfare recipients employed.

But that message may not be well received on Capitol Hill. A House Republican aide notes, "Yes, we'll hear that. But we'll ignore it. It's just not true." "I've never met a governor who didn't like federal spending," says Republican Representative E. Clay Shaw, Jr., who, while willing to consider some measures to help welfare recipients find jobs, nonetheless says, "I don't see any big changes in what we did this year."

Others aren't sure the governors will make the pitch at all. The nation's economy is generally in good shape, state and local finances are relatively stable, the welfare caseload has dwindled some and the growth of Medicaid spending—which had, until recently, been squeezing all other state programs—has slowed considerably. Without a recession to prompt them, GOP governors may not feel compelled to act. Says Elaine Ryan, director of governmental affairs for the American Public Welfare Association, an organization of state and local welfare administrators, "I don't think there's any groundswell to look for additional dollars yet."

Then again, maybe the Clinton administration might be able to insist on the money itself, if it really went to the wall, if it proposed savings from some of its other cherished programs. Revising the welfare law "will be a high priority for us," says one administration official. "And in a budget agreement, there's a good chance there'll be bipartisan support both for softening the cuts—especially for legal immigrants—and for making sure that welfare reform means moving people from welfare to work."

Robert Greenstein, executive director of the Center on Budget and Policy Priorities, a liberal public research group, thinks modest changes are possible. But he isn't wildly confident. "When the rubber meets the road and you really have to set priorities," Greenstein wonders, "where will this be on the list?"

JEFFREY L. KATZ writes about welfare and other social policy issues for *Congressional Quarterly*.

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Why welfare reform is constitutional.

MOCK TRIAL

By Romesh Ratnesar

Since the August afternoon when President Clinton abolished the federal guarantee of assistance to the poor, liberal groups have scrambled to recoup their losses. Enticed by the president's pledges, many hoped that a re-elected Clinton could convince a more cooperative Congress to fix the welfare bill's harsher provisions. But the election has not produced a more pliant Congress, and the only changes Clinton is likely to get through will be relatively modest (see "Small Change," by Jeffrey L. Katz, page 14). So critics of welfare reform are turning to a familiar refuge: the courts.

Will the courts throw out significant portions of the new welfare law? Not likely. Some observers contend that the best moment to question the constitutionality of welfare reform came—and went—with the drafting of the bill itself. With the new bill in effect, no remnant of a federal statutory entitlement to welfare benefits exists. The Supreme Court has been historically reluctant to overturn the wishes of Congress on policy toward the poor. So any court-ordered changes to the law will come at the margins. "The thrust of it won't be subject to challenge," says Fordham University law professor Matthew Diller. "I don't think this law is going to be torpedoed as being unconstitutional."

That won't stop its opponents from trying. The first wave of litigation against the new law will concentrate on its treatment of non-citizens. The City of New York, prodded by Mayor Rudolph Giuliani, has already sued the government over a section of the bill allowing city employees to report to federal authorities undocumented aliens who seek basic services. The bill overrides the city's own 1989 law that prohibits city officials from turning aliens over to the feds, under the assumption that discouraging aliens from obtaining health care or reporting crimes jeopardizes public safety. The city's lawsuit contends that the new law breaches the Tenth Amendment's limits on federal authority. A more important provision of the law forbids states from using state and local funds to provide benefits to most non-citizens, unless the state passes its own law making immigrants eligible. That, too, immigrant advocates argue, is vulnerable to Tenth Amendment challenge.

The Constitution, though, grants Congress wide latitude in setting immigration policy. And, last month, Tenth Amendment claims were dealt a grave blow by federal Judge Mariana Pfaelzer's decision to uphold California's policy, made under the new law, of denying prenatal care to illegal immigrants. "I don't think it's going anywhere," says Yale Law School's Peter Schuck, of the New York suit. "This is an immigration matter, which is federal policy. I don't believe the courts would hold that it is local in this case."

Now opponents of the welfare bill are trying to return to first principles, challenging Congress and the states' ability to withhold benefits from immigrants under any circumstances. The major roadblock to such challenges on the federal level is the 1976 case *Mathews* v. *Diaz*, in which the Court ruled that the federal government could make distinctions, in its dispersal of Medicare benefits, between non-citizens who had lived in the country for a short time and those who had been here long enough to obtain "greater affinity with the United States." But liberal groups argue that the welfare bill goes beyond such distinctions, creating an entire subclass of aliens who may never qualify for benefits. "Can the federal government," asks Steven Shapiro, legal director for the ACLU, "tell people who have followed all the rules, have been living here legally and paying taxes, that when they need government assistance they are barred from getting it?"

Immigrants' advocates like to cite the Court's *Graham* v. *Richardson* ruling of 1971, which turned back two states' attempts to deny welfare to legal immigrants, in part on the grounds that the Fourteenth Amendment guarantees equal protection for citizens and aliens. But this Court tends to defer to Congress, and the welfare law explicitly calls for denial of benefits to legal aliens. "In the earlier cases, Congress hadn't spoken as loudly and as clearly as they have here," says Yale's Schuck. "That's partly why some of those cases succeeded."

Beyond the immigrant provisions, a few critics of the new law hold out hopes that its chief provision—the five-year limit on eligibility for benefits—will be struck down in court as irrational. They argue that the states cannot arbitrarily distinguish between those receiving welfare and those who have been cut off simply because they have used up their five years. But here they are on shaky ground. Because the law abolishes the existing welfare entitlement, states can concoct virtually any plan they want for the poor. Says Amy Wax, a law professor at the University of Virginia: "The baseline understanding is that there's no requirement on the state to give benefits to anyone." Once state legislatures define the rules of their welfare plans, they need only adhere to a standard of rationality—"an extremely relaxed standard," Wax says—when determining eligibility for benefits. So loose are the law's rules that states could—as the state of New York has proposed to do—stop writing welfare checks altogether, choose to deliver assistance in some other form, such as vouchers, and still stay clear of constitutional danger.

The debate over the legality of terminating welfare

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benefits may, in time, also prove the death knell of a particular strain of judicial activism in welfare law. Since the late '60s, lawyers and judges on the left have suggested that the Constitution obligates the government to provide basic income to the poor. Their most lasting achievements came in the twilight of the Warren Court, when, among other rulings, the justices struck down one-year residency requirements on state benefits. After that, though, the Court retreated. The vast majority of rulings handed down in the '70s and '80s merely cited the provisions of the welfare statute itself when deciding in favor of aggrieved welfare recipients. No substantive "rights" to welfare were established.

Yet, even today, critics of the new law such as Peter Edelman—who prior to his September resignation from the Health and Human Services Department was best known in legal circles as the author of a 1987 article that argued that the government has "certain affirmative obligations" to its citizens—contend that a liberal reading of the Constitution could shake the legal foundations of welfare reform. "There's some expression in the case law," Edelman says, perhaps a bit wistfully, "which might suggest that the arbitrary cutoff of benefits may not be upheld."

It is hard to find any other legal scholars today who really believe this Supreme Court would block significant portions of the new law. (Indeed, it was in large part Edelman's exotic views on welfare that cost him an expected federal judgeship last year.) "The whole élan from the late '60s that did try to arrive at a whole theory of a constitutional entitlement to welfare—that movement's dead," says Sanford Levinson of the University of Texas Law School. "It's unthinkable that anyone on the Supreme Court believes that welfare rights are constitutional." What's more likely, in the event of a challenge to the new law's five-year cutoff of assistance, is a reading of the Fourteenth Amendment narrow enough to uphold Congress' desire to place a ticking clock on welfare benefits.

Liberals might still win a victory or two, though. For one thing, the law imposes draconian restrictions on the Legal Services Corporation's activity, which the courts are likely to soften. For another, litigation in state—as opposed to federal—courts may provide an opening, since twenty state constitutions provide some language in them pledging state support for the needy. And there remains the chance, albeit a remote one, that the new welfare programs will be held up if states sloppily drop people off the rolls; the Supreme Court ruled in the 1970 case *Goldberg* v. *Kelly* that welfare recipients are constitutionally entitled to a hearing before their benefits can be withdrawn.

Small triumphs, though, won't hide the bottom line of welfare reform: score one for politics. "One of the great lessons of recent history is how disastrous the liberal strategy of the late '60s and '70s has been—to do everything in the courts," says Levinson. "People are beginning to learn that the way you attain victories is by winning elections." •

How American physics became second-rate.

MELTDOWN

By Tony Rothman

Three years ago in these pages I reported on the bizarre situation facing the Princeton Plasma Physics Laboratory, the country's largest center for the development of fusion energy (see "Cold Fusion," TNR, September 20 & 27, 1993). At the time, Princeton's flagship project, the Tokamak Fusion Test Reactor, or TFTR, was nearing the end of its operating lifetime. However, due to government cutbacks in the fusion program, an advanced successor device, known as TPX, would not be completed until the year 2000. As a result, the lab faced a five-year "tokamak gap" between the old machine's decommissioning and the new machine's startup. While the lab's directors put on a brave face, extraordinary schemes were floated to deal with the looming interregnum: staff physicists spoke of the possibility that they might be farmed out to other national facilities, or even to labs abroad, hoping to return if and when TPX was ready.

In the past three years the situation at PPPL, as the Princeton lab is acronymically called, has deteriorated from the bizarre to the fatal, and the lab's decline has become a case study for the general trajectory of physics in America. The ultimate goal of fusion research is to provide Earth with a clean energy source via the same mechanism that powers stars—hydrogen fusion. Fusion is about 1 million times more efficient than burning fossil fuels, and considerably safer than nuclear fission. But it is immensely harder to obtain. To instigate a fusion reaction, a fuel (called a plasma) must be heated to hundreds of millions of degrees and held within a magnetic chamber (the tokamak) long enough to produce substantial amounts of energy. Achieving these conditions is arguably the most difficult technological challenge ever undertaken.

Still, from the scientific point of view, significant strides have been made, and many of them were made at the Princeton lab. In late 1993 the TFTR broke all fusion power records. By the end of 1994, the machine was generating more than 10 million watts for short bursts. This is roughly 10 billion times more power than tokamaks could produce twenty years ago. It is also about a third of a fabled benchmark known as "scientific breakeven," the point at which the plasma is producing as much energy as is required to heat it. Just this month, Japanese researchers announced they had achieved "equivalent breakeven," meaning that, if their tokamak could use the higher-octane fuel PPPL does, it would

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actually produce a net gain in energy.

Scientific breakeven, however, falls far short of political breakeven. In August 1995, the Department of Energy canceled TPX, leaving the U.S. without a next-generation fusion device; a month later the Princeton lab was forced to lay off about a third of its employees. In December 1995 the Energy Department appointed a Fusion Energy Advisory Committee to assess the nation's fusion program. The committee's report noted that cutbacks—in 1996, the fusion program's budget was reduced by 32 percent from the previous year's $244 million—had already produced serious consequences, including "a major loss of scientific and technical manpower."

Now, the Princeton tokamak is to be shut down once and for all in early 1997, and the lab's mission has been sharply curtailed. The most striking passage of the Fusion Committee's report recommended "that the mission for the U.S. program be restated to put it more in a world context, reflecting the reality that the leadership of the world's fusion energy development effort now lies outside the United States...." Whatever the reconstituted Princeton laboratory will be, it will not be in the business of creating practical fusion. In fact, the lab recently signed a contract with the Koreans to help them build what is essentially TPX, the new reactor project that was canceled at Princeton. Meanwhile, both Japan and Germany are currently constructing billion-dollar fusion devices of their own.

There are a few general lessons to be learned from the decline of the Princeton lab. One is that a chasm exists between the physicists' point of view and everybody else's. From the plasma physicists' perspective, the results of the past three years have been spectacular—spectacular enough to convince them that, with enough money, fusion can be made a reality. Yet nonscientists and even scientists from other disciplines have the impression that plasma physicists have abandoned fusion as an impossible dream. Earlier this year, for example, sixteen environmental and "renewable" fuel organizations wrote to Energy Secretary Hazel O'Leary, urging in part that "funding for nuclear fusion be substantially curtailed since there is little prospect that this technology will ever be commercially viable...." And Republican Congressman Dana Rohrabacher of California, who sits on the House Science Committee, continues to claim that scientists are no closer to a working reactor than they were forty years ago. (But then Rohrabacher also claims that global warming is "liberal claptrap.") This chasm in understanding has brought fusion to a Zeno's paradox: if success is defined as nothing less than a commercially viable reactor, then success is impossible because ever-dwindling budgets push the finish line further into the future.

Fusioneers must shoulder a large share of the blame for their predicament. For decades they promised that a working reactor was just over the next machine. The problem of fusion turned out to be more difficult than their best and brightest had estimated, and with the traditional arrogance of physicists they refused to admit it. When they have deigned to sell their cause, they have tended to do so clumsily, often resorting, as PPPL's well-intentioned director did in congressional testimony earlier this year, to hopelessly technical jargon. Now fusioneers risk repeating the mistakes made by the Supercollider's proponents, who, when their project was jeopardized (and then canceled) several years ago, never bothered to enlist the support of either the scientific community or the general public.

The other lesson to take from fusion's demise is that budget cutting, in and of itself, does not constitute foresight. We need to ask: Would a future budget deficit be worse than a future energy, technology or productivity deficit? Congressional Republicans have billed themselves as "pro-applied science"; yet the $235 million allocated to the applied science of plasma physics is about a third of the budget of the pure science of particle physics, about one-fifth the price of a new B-2 stealth bomber (which the Pentagon doesn't want) and about a tenth of the annual allocation to NASA's space station (which is not science, has no mission and is almost unanimously rejected by the scientific community as pure pork-barrel spending).

As support for basic research collapses, it creates a vast wave effect, spreading far beyond a few visible "big-science" projects. Partly due to research cuts, the number of entering physics graduate students has declined by 25 percent since 1992, and the physics population is rapidly aging (the median age at PPPL is about 54) with a concomitant loss of knowledge as fewer apprentices emerge to grasp the torch. In twenty years we won't have the personnel to build a tokamak, even if we wanted to.

The situation should force some hard questions on both physicists and politicians, questions that in an environment of limited resources often have no obvious answers. Does society equate science with VCRs? Should the government support fundamental research? If the answer to the first question is yes, then the answer to the second question should be "not much." Yet the public clearly finds fundamental research more interesting than applied research; cosmology, superstrings and the possibility of extraterrestrial life attract far more attention than solid-state physics, the science behind VCRs and computers. Besides, basic research often (though not as often as physicists claim) leads to applied spinoffs.

Furthermore, many major advances in both pure and applied science—from the Internet to large-scale computing to biotechnology—have required government support. And while it could be argued that, in the future, American private industry will simply take up where government leaves off, the fact is that large companies such as IBM, Xerox and Hewlett-Packard are also downsizing their research divisions.

One more question we should ask ourselves before we let the profession of physics sputter out entirely: What will happen in two decades when there is another energy crisis and the number of physicists has dropped to virtually zero?

TONY ROTHMAN is the author, most recently, of *Instant Physics* (Fawcett).

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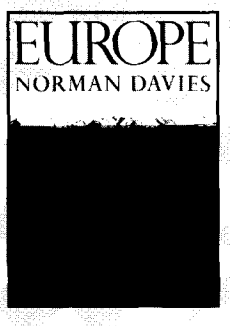
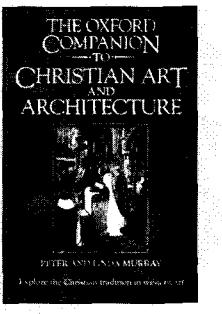
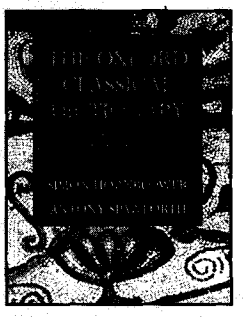
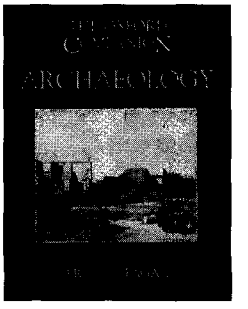
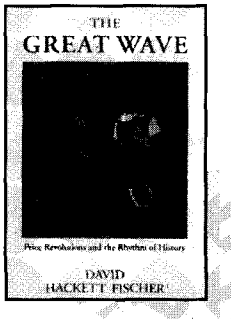
It's the thought that counts











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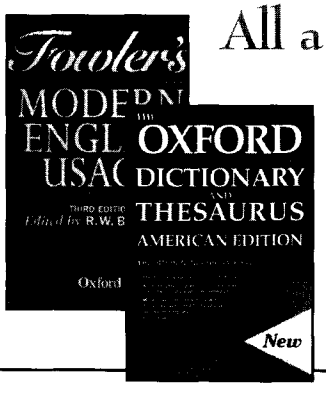

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How the right embraced "Asian values."

YEW TURN

By Jacob Heilbrunn

"He obviously has a different view of life than we do in terms of a democratic society. He frankly doesn't really care.... He has his own country and his own standards." Sound like a Western leftist defending a Third World tyrant? Guess again. It's Republican Senator William Cohen lauding Lee Kuan Yew, senior minister of Singapore, who recently traveled to Washington to receive the Nixon Center for Peace and Freedom's second annual Architect of the New Century award. Over 400 guests, including Henry Kissinger, James Schlesinger, Alexander Haig and Robert McFarlane, trooped into the Four Seasons for the $1,000-a-plate tribute. The November 11 dinner, which raised a half-million dollars, had already been denounced by *New York Times* columnist William Safire, a former Nixon speechwriter, who called upon "all good Nixonites" to shun it. There is more to the affair, however, than a mere spat over the true Nixon legacy. The gala dinner highlighted a startling new species: fellow travelers on the right.

In his classic work *Political Pilgrims*, the sociologist Paul Hollander exposed the nasty tendency of leftist and liberal American intellectuals to embrace anti-American revolutionary societies such as the Soviet Union, Cuba and China during their most repressive phases, while denigrating the Western, liberal democracy they themselves enjoyed. Hollander described how the intellectuals' distress with various aspects of the social and political arrangements at home—racism, poverty, unemployment—prompted them to extol the new authoritarian and totalitarian regimes that appeared to offer economic progress with social equality. In this construct, the oppressive and anti-democratic nature of these regimes actually proved an attraction: the march of progress could not be properly advanced by such a weak and corrupt model of government as liberal democracy; only ruthless order could bring forth the people from their suffering. As Lincoln Steffens said in perhaps the most famous, and certainly the most fatuous, pronouncement of all: "I have seen the future and it works."

In the last several years, the American right has oddly come to ape the attitude of the American left toward Russia. Asia is the conservatives' future that works. Dismissing liberal democracy as incapable of redressing American social ills, conservatives hail Singapore as a model of economic and social progress—a new type of democracy superior to the American variety.

The intellectual godfather of this movement is Henry Kissinger. Just as Kissinger's move to détente with the Kremlin rested on the assumption that the U.S. was as weak and as decadent as Weimar Germany, so Kissinger now preaches a realpolitik that disdains badgering Asian regimes about democracy. It is a very personal sort of realpolitik. One of the most notable aspects of the new enthusiasm for Asian authoritarianism is how neatly the rationale of conservative intellectuals dovetails with the personal financial needs of conservative consultants—who are, as it turns out, quite often the same people. The most immediate beneficiary of their benevolent view of Asia is Lee Kuan Yew, but the hope is that China will follow the Singapore model. As an ethnic Chinese, Lee is the main interlocutor between Beijing and Washington. Ultimately, the defense of Singapore by American conservatives is a smokescreen for defending Chinese communism—and for bringing the Chinese government into what might be called the community of socially acceptable nation-clients.

One of the first signs of the love affair with Singapore came in an article in the fall 1988 *National Interest* by neoconservative editor Owen Harries titled "'Exporting Democracy'—and Getting it Wrong." Harries limned a number of conservative themes: under Lee's direction Singapore had made astonishing economic progress, had faced down a communist insurgency, and the U.S. had no business inflicting its conception of democracy on the country. Harries depicted as perfectly understandable the decision of the Singaporean government to restrict the circulations of *Time* and *Asiaweek*; and he defended its decision to rearrest eight dissidents after they issued a statement in April 1988 stating that they had been tortured in 1987. "One could, indeed, mount a strong case," wrote Harries, "that ... Singapore has had the best government in the world over the last twenty years."

When young American Michael Fay was sentenced to flogging for illegal spraypainting in 1994, the depth of the conservative attachment to Singapore became even more apparent. "[N]o responsible analyst will deny," wrote William F. Buckley, Jr., "that there are correlations between Singapore's handling of crime, and the incidence of crime in Singapore." In an April 13, 1994, column, Patrick Buchanan was more explicit: "It is our moral elite's distance from reality ... which induce[s] a moral paralysis when it comes to punishing domestic enemies." Singapore's officials "know first-hand what happens when bad men are allowed free rein." In short, American democracy could learn more from Singaporean elites than Singapore could learn from America.

Most recently, as the flap at the Nixon Center reveals, many conservatives have started to champion what amounts to a relativistic multiculturalism. In his elegant Washington office lined with Asian prints and pictures of a smiling Nixon, Dimitri Simes, who is the president of the center and a leading Kremlinologist, argued that the Singapore experiment in democracy should not be judged by American standards. "It is within the range of

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the United States to show tolerance," Simes said. "If we want to be a benign superpower, then respect is a virtue, as is a tolerance of diversity." Lee, he added, has become "synonymous" with Asian civilization. "There is ethnic harmony, the streets are free of crime, the schools free of drugs—a lot of things we find disagreeable here are dealt with effectively."

Other conservatives agree. Simes faxed over a copy of a handwritten note from Robert McFarlane dated November 13: "Dear Dimitri, Congratulations. Another solid statement of principle in your choice of this year's architect and a very professional presentation." And Alexander Haig, who now heads something called the Singapore-America Council, erupted when I inquired about Lee's critics. "Here in our society we're not a good example," he said. Lee, he declared, "is a paragon of Western capitalism and Western democracy. Singapore has made great progress ... but in a model best-suited [to Singapore] in his own judgment."

Unlike the former Soviet Union, of course, Singapore actually does work. It is a center of global manufacturing and service industries, the third-largest oil-refiner in the world. It boasts a per-capita GNP higher than the United States. But these advances have not made Singapore any friendlier toward the U.S. Apart from harassing numerous American journalists, Singapore has even sued a man named Christopher Lingle, an American who taught at Singapore's National University, over an innocuous op-ed in *The International Herald Tribune* that criticized Singapore's judiciary. His case not only betrays the insecurity of the Singaporean regime, but also points to Singapore's fundamental strategy—to create, together with China, a new system of "Asian values" against the West.

In an extensive interview in the March-April 1994 *Foreign Affairs*, Lee made the case for a unique Asian civilization by way of decrying the U.S. He complained about "the erosion of the moral underpinnings of a society" and about "the liberal intellectual tradition," and declared that Americans should not attempt to "foist their system indiscriminantly on societies in which it will not work." Elsewhere, Lee has called Western democracy "decadent." In another issue of the journal, Kishore Mahbubani, permanent secretary of Singapore's Ministry of Foreign Affairs, argues that democracy is an impediment to rapid economic development.

For Kissinger and his acolytes, the dream is that Singapore will provide a working model for China, a quietly effective dictatorship. As Chalmers Johnson, the distinguished political scientist who resigned from the Nixon advisory council in protest, observes, "Lee is the instructor of the Chinese for ... avoiding the known consequences of economic advances. With its egalitarianism, Singapore is a Maoist paradise." Lee's speech in Washington was, in fact, devoted almost entirely to exhorting the United States to engage rather than contain China. For American businessmen, appeasement is nirvana: they have always relished working with dictatorships that guarantee stability. And foreign policy big shots like Kissinger give them the intellectual cover they need.

Of the old fellow travelers, one could at least say they were motivated by idealism—an idealism they perverted, but an idealism nonetheless. Of the new breed, even this cannot be claimed. The lovers of democracy, Singapore-style, are merely exploiting American insecurities. Nothing is easier than convincing an American that democracy is its own worst enemy—unless it is selling an American businessman on the secrets of dealing with the inscrutable Orient. There is one thing, though, that unites the fellow travelers old and new. They blame America first. •

SAVANNAH POSTCARD

SHALOM, Y'ALL

By Stephen Glass

Every Sunday evening, after a long and trying day of missionary work here, Jim Johansen drives 300 miles to Atlanta, where he lives. Along the way, he applies to himself the regimen he has developed over the years to restore body and soul after a tough stint on the conversion trail. He drives first to one of Savannah's Krispy Chic restaurants and orders the Better Deal Bucket, which consists of ten deep-fried drumsticks, plus a large side of mashed potatoes, although Johansen skips the potatoes. He puts the bucket on the car seat next to him, and, as he drives, he works his way through it, drumstick by drumstick. He doesn't gollup his food. He doesn't even allow himself the first drumstick until he has merged onto I-16, the road that connects Savannah to Macon, halfway to Atlanta. In between drumsticks and throughout the day, he smokes non-filtered Camel cigarettes, a great many of them.

In 1991, when Johansen was trying to convert Buddhists, he averaged two packs of cigarettes each Sunday and five drumsticks on the drive home from Savannah to Atlanta. In 1992 and 1993, when he was trying to convert the "miscellaneous," as he calls members of the smaller and more exotic sects, he increased his intake to seven drumsticks and a wing, and four packs. Now he is trying to convert Savannah's Jews, and, on each Sunday drive, he goes through a full Better Deal load of ten drumsticks. As for Camels, he claims to be up to a terrifying six and a half packs a day. The effects show. Johansen looks like Orville Redenbacher gone portly, and his white beard is stained nicotine yellow all around the rim of his mouth.

"It's hard work converting Jews, and that makes me hungry," Johansen says. He speaks in staccato bursts

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between puffs on his cigarette. Lighting a fresh cigarette off the butt of one that is guttering to its last gasp, he ruminates on the challenge. "Yep, they may be the hardest [puff]. They're harder than anyone [puff]. Harder than the Chinese [puff]. And the Chinese were hard." He shakes his head. "After these ten legs [puff] ten legs! [puff] I'm still [puff] still hungry."

Eight years ago, Johansen retired from his job as a bookkeeper at a car dealership and turned his attention to God's work—converting the heathen to his Baptist faith. Every weekend for three years he has traveled throughout Georgia, looking for convertible souls. He has tried his hand at apostates of all stripes; once he even took a shot at a family of Zoroastrians. It was all tough work, but not impossible. Then, in June, the Southern Baptist Convention—the executive body of the largest branch of American Protestantism—voted to proselytize among Jews, making national headlines. The resolution rejected the approach of other Christian denominations that had decided to seek a dialogue with Jews rather than trying to convert them. Breaking with this, the Baptists mounted the most aggressive effort to convert Southern Jews that anybody can remember in years.

"Even if they don't want to hear it, we have to tell them about Jesus," says Savannah's Southside Baptist Church pastor Allan Bosson, in comments laced with New Testament citations. "They are going to Hell, and we have to stop that." Thus did Jim Johansen find himself obliged to give up his Buddhists and atheists for Jews, and thus did he become a ten-drumstick, six-pack-a-day man. "My doctor tells me this and that are not good for my health," Johansen says while exhaling smoke through his nose. "But at least my soul is cleaner."

It has been a long time since American Christianity has tried, in any organized way, to convert American Jews. Ever since 1928, when the liberal theologian Reinhold Niebuhr declared what amounted to a détente with Judaism, the major Protestant denominations have mostly adopted a live-and-let-live approach. Perhaps the reason is that Jews have proven themselves to be such difficult converts. The last serious Southern Baptist attempt at mass conversions of Jews petered out in the late 1980s when the man in charge of it basically gave up. He began teaching dual-covenant theology, which argues that Jews are not heathen at all, but are the only population that may reject belief in Christ as the Messiah and still be saved, because they enjoy a special, pre-Jesus covenant with God.

The new Baptist effort in Savannah began with what some hoped would prove to be quiet, modern efficiency—a telemarketing program. One day this July, many Jews in Savannah whose last names began with a "C" received phone calls inviting them to a speech about "the Chosen People and Jesus, their Messiah." The calls produced few tangible gains, however. Only about ten Jews even turned up for the speech. Soon after, "S"'s were invited to a "spiritual, cultural fair." Similar results: few Jews showed and none seemed interested in converting.

But worse lay in store for the Baptist effort. As the conversion-by-phone-book drive continued, it produced an unanticipated and, to the Baptists, distressing consequence. The city's small and suddenly beleaguered Jewish population decided to break with an anti-proselytizing tradition dating back millennia. Four months ago, Savannah's Jews launched a convert-to-Judaism counter-campaign against Savannah's Baptists.

Rabbi Bernie Elzer of Temple Mickve Israel, America's third-oldest synagogue, is the quarterback for this new offense. During the summer, Elzer holds Friday night services at a congregant's home. Wide-eyed and wide-mouthed, Elzer—who used to lead a New Jersey synagogue—is a blend of the North and South: efficient hospitality. He rapidly greets all newcomers with a cheery "Shalom, y'all," inquires about their background and introduces them to the group. Half Northern transplants, half native Savannians, they share a potluck dinner of bagels and fried chicken, rugalah and cobbler.

After a strong sermon warning that too many Jews have been leaving the faith, Elzer explains his strategy for fighting back. First, he called Bosson to ask for a list of his congregants and to suggest that Southside's members might be interested in hearing the Jewish "side of the story." Not surprisingly, Bosson refused. So Elzer proposed Plan B: buying ad space in *The Savannah Morning News*. "There are people out there who are hungry for spiritual understanding," the rabbi explains. "We should reach out to them. I promise you it will be a tasteful ad. Let's just call it an invitation."

Many of Elzer's congregants are skeptical of Plan B, and the question of whether it is right and wise to mount a serious counter-missionary effort remains a matter of hot debate among Savannah's Jews. Some fear opening up a "free agency system" of religion. Potential converts, they say, will simply choose the faith that offers the sweetest deal—the most perks and the easiest entry. These objectors fear Jewish missionaries will debase Judaism in trying to boost the faith, in what one congregrant calls "a race to the bottom." "For the Baptists, you only have to say you believe in Christ and, poof, you're in," says Jerome, an elderly Jew who refused to give his last name, lest he provoke evangelicals to call him at home. "If we want to get the unreligious, we're going to have to drop a lot of the prerequisites."

"I believe in truth in advertising," adds a dour older man who also won't give his name. "So what's the ad going to say? That it takes a lot of studying to convert, and when you finally become Jewish, your kids will have no friends and you'll be miserable? That's not going to work very well." Elzer insists the synagogue will run only vague ads that invite people to attend a ceremony or a class, or to meet with a rabbi. Those who seem serious about converting will be made aware of the risks involved. In the meantime, Elzer hasn't yet taken out any ads—he's still building support.

Now, the entire situation seems to be pretty close to a

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stalemate. While neither side speaks in hard data, the actual numbers of converts won by Baptists or Jews appears to be close to nil. James Sibley, who leads the Baptist conversion effort from Dallas, acknowledges that Jewish backlash nationwide has so far frustrated the attempt. What is more, the experience has not been pleasant. Sibley claims he has received death threats and refuses to have his picture taken by newspapers.

In Savannah, there is some muttering of escalation. The potential counter-campaign has some evanglicals worried. Billy Carthen, a Baptist who lives in a neighboring county, says just hearing about the ad makes his "ears burn." If Mickve Israel advertises, Carthen says, he and his friends will up the ante: they'll begin leafleting outside synagogues during Shabbot. And, certainly, Jim Johansen is not about to back down. When I asked him about the concept of dual-covenant theology, he was in a rush, anxious to get on the road and back to his chicken, but he stopped long enough to dismiss the idea. "Dual bullology," he said. "That's what I call it. God doesn't talk [puff] out of two sides [puff] of his mouth [puff, cough, wave cigarette in the air]. What's that mean? Right and wrong are both right? Go ahead, tell that to God. I dare you." •

Clinton's sweetheart deal with Japan.

DOLLAR FOOLISH

By John B. Judis

After Richard Nixon's re-election in 1972, Democrats accused Arthur Burns, whom Nixon had appointed chairman of the Federal Reserve in 1970, of rigging the election by overstimulating the economy. Burns, they charged, had produced a temporary reprieve from recession, but had also built up inflationary pressures that would burst forth later and produce an even sharper recession. In coming years, Republicans may make similar charges against Robert Rubin, Bill Clinton's secretary of the Treasury. With an election looming, Rubin took actions that kept the recovery buoyant, but that may have undesirable repercussions in the coming years. In private negotiations with the Japanese Finance Ministry, Rubin made an agreement to prop up the dollar against the yen.

All the outward details of this story can be completely confirmed, but some of the drama between American and Japanese officials cannot be. High-stakes economic diplomacy depends for its success on secrecy and often deception, and it is usually impossible to find out what really happened behind closed doors. I first heard the story of Rubin and Japanese finance minister Eisuke Sakakibara from R. Taggart Murphy, a former investment banker in Tokyo and author of *The Weight of the Yen*. Since then, I have heard further details from another banker in Tokyo and from an American official who, while not in Treasury, was privy to the details of U.S.-Japan economic policy. This official, whom I cannot identify, corrected some of Murphy's original story, but preserved the essential thrust.

The tale begins on a technical note: exchange rates. The rate at which one nation's currency exchanges for another depends on the relative strength of the two nations' economies and on their balance of trade. When one nation consistently runs trade surpluses with another, the relative value of its currency will rise, making its exports more expensive and the other country's exports cheaper, until the two countries' trading accounts balance. Or at least that's what is supposed to happen. Sometimes, though, a country will pursue a "mercantilist" strategy—it will do whatever it can, from erecting informal trade barriers to depressing domestic consumption, to preserve its trade surpluses. In that case, its currency will continue to appreciate at the expense of its trading partners. This has long been the case between Japan and the U.S. As Japan has enjoyed trade surpluses with the U.S. over the last twenty-five years, its currency has steadily appreciated and the dollar has depreciated. In 1971, the dollar was worth 360 yen. On April 19, 1995, it hit an all-time low of 79.75 yen.

At that point, however, Japanese officials began to worry that the soaring yen would finally begin to price Japanese goods out of foreign markets, putting smaller or more inefficient companies out of business. The government, which had always exported its way out of recessions, began to wonder how Japan could escape its current slump without transforming its fiscal policy. And Japan's bankers grew alarmed at what could happen to $800 billion of debt accumulated during the boom years.

That spring, the Ministry of Finance picked Sakakibara to head its Bureau of International Finance. Groomed to negotiate with Americans, Sakakibara speaks fluent English and has a Ph.D. from the University of Michigan; in 1980, he was even a colleague at Harvard of Deputy Treasury Secretary Lawrence Summers. According to sources in Japan, Sakakibara got his appointment because ministry officials thought he alone could deal with the formidable Rubin and Summers. His mission was to convince them to join Japan in revaluing the dollar at the expense of the yen.

And he succeeded. How did he do it? In an op-ed piece R. Taggart Murphy wrote last March for *The New York Times*, he described the Ministry of Finance as trying to get the U.S. to prop up the dollar in exchange for Japanese purchases of American Treasury bills. When I interviewed Rubin afterwards, he rejected this precise version of events. As I learned later, things seem to have transpired slightly differently. In talks with Rubin and Summers, Sakakibara stressed that Japan was on the brink of a major bank crisis—one that could directly threaten the American economy. As Japanese banks began calling in their foreign debts and cashing

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in their Treasury bills, American interest rates would likely soar, precipitating a severe recession in the midst of Clinton's re-election campaign. Sakakibara was probably exaggerating, but Rubin and Summers, who had been caught unawares by Mexico's debt crisis, were receptive to the message. Said one former government official, "Having been burned from misreading the tea leaves in Mexico, they were prepared to think they could get burned in Japan." They agreed to work with Japan's Ministry of Finance to raise the value of the dollar.

Rubin, the former chairman of Goldman, Sachs, was soon using his extensive connections in Wall Street to talk up the dollar. Japan's Ministry of Finance went further. The Bank of Japan began using the yen for massive purchases of dollars—it exchanged $21.5 billion in August and September 1995—driving up the price of the dollar at the expense of the yen. It then used the dollars to purchase the Treasury bills that the government auctions to pay off its debt. Sakakibara and the Ministry of Finance prodded private Japanese firms to follow suit. In August 1995, the Ministry of Finance relaxed regulations that had discouraged life insurance companies from investing their surplus overseas. Through the end of September, the five major Japanese life insurance companies bought $4.2 billion of U.S. bonds.

These huge dollar purchases have continued. According to Ron Bevacqua, an economist with Merrill Lynch in Tokyo, the Federal Reserve issued $71 billion in new debt between January and May of this year. Foreign central banks purchased $56 billion. The largest single buyer was the Bank of Japan with $20 billion, but Bevacqua claims that, when various indirect means of finance are taken into account, the Bank of Japan was responsible for purchasing "nearly half of the U.S.'s debt in the first quarter of this year."

Japan's dollar purchases, combined with relatively low interest rates in Japan, helped to drive up the value of the dollar. It topped 100 early this year and climbed to 114.92 in late October, a massive 40 percent appreciation since April 1995. Japan's actions had one immediate effect. Whether or not it was in the back of Rubin's mind, Japan's purchases of Treasury notes did help to keep interest rates down by increasing the demand for T-bills. Says Ron Bevacqua, "It has kept U.S. rates low, and because it has added to the total pool of capital in the U.S. economy, it has indirectly propped up the U.S. stock market." The economy, which sputtered in 1995, steamed ahead this year. Says Murphy, "I frankly think that Clinton owes his re-election to three people: Newt Gingrich, Alan Greenspan and Robert Rubin."

In the short run, the deal between Sakakibara and Rubin hasn't yet affected the trade balance between the two countries. Major export contracts are usually for a year and a half or more in advance. But it will in the long run—and not just with Japan, but with Asian countries where Japan has subsidiaries. By next year, the U.S. trade deficit could begin to climb, as the change in prices kicks in. American auto companies are already complaining. According to *Business Week*, Japanese car companies have cut prices by 1.1 percent for the 1997 model year while American firms have increased them an average of 2.8 percent. American firms will also have trouble exporting to Japan. "If this continues, we could see a major reversal in the ability of American companies to gain market share in the Japanese market," Tony Yamada, a representative of Mitsumi Enterprises, a San Francisco trading house, told *The Chicago Tribune*. Fred Bergsten, director of the Institute for International Economics, warns of a "huge surge in Japanese trade surplus in 1997 and especially 1998." This, in turn, would imperil the value of the dollar, force the U.S. to raise interest rates and end the economic recovery. Rubin, like Burns before him, may merely have postponed a recession.

But Rubin's actions may have even more serious consequences. His willingness to revalue the dollar eighteen months ago removed a major incentive for Japan to open up its economy to foreign trade and investment, allow unprofitable smaller firms to fold and alter its fiscal strategy to encourage domestic consumption—in short, to become a normal member of the world trading system. Says Murphy, "The United States had more leverage than usual in June of 1995, panicked as the Japanese were about the yen, and it would arguably have been easier then than at any other time in the past twenty years to overhaul the structure of U.S.-Japan relations." Instead, the U.S., haunted by the prospect of another financial collapse, allowed Japan to preserve its protected markets and trade surpluses. Brookings Institution economist Ed Lincoln, former counselor to Ambassador to Japan Walter Mondale, told the trade newsletter *Sam Trade*, "The abandonment of the high yen policy by the Clinton Administration in 1995 has led to a near abandonment of Japanese company efforts to deregulate the Japanese economy and lessened incentives to buy cheaper imported products." That could be bad news not only for U.S.-Japan relations, but for the world economy.

Finally, Rubin's acquiescence in Japan's practice of buying up dollars with yen and reinvesting them in Treasury bills reinforced American dependence on foreign capital to fund its debt. In the first half of this year, Ron Bevacqua estimates, foreign governments and private foreign investors purchased 95 percent of U.S. debt. Foreign governments and firms now own 27-28 percent of all American federal debt. Says Bevacqua, "When you are underwriting another country's economy, it gives you incredible leverage in negotiations with them."

Of course, Rubin can still argue that the U.S. had no choice in the spring of 1995—that the Japanese were on the verge of a financial collapse. But few economists believe that to have been the case. Said one former government official, "The Ministry of Finance sold us a bill of goods and we bought it." The price for that bill of goods did not come due during the last eighteen months. If anything, Rubin's deal with Sakakibara helped keep the U.S. economy humming during the election campaign. But it will come due soon—perhaps even before Clinton and Rubin officially begin their second term. •

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THE HARD QUESTIONS

Cardinal virtue

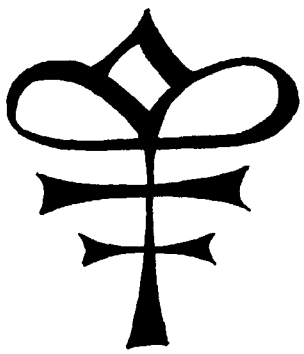
The death of Joseph Cardinal Bernardin last week marks the passing of not only a man of great faith but of a moral leader whose interventions in public life, particularly his recent letter urging the Supreme Court not to unleash Kevorkian-style euthanasia upon the land, were marked by a generosity of spirit frequently absent from discussions of religion and public affairs. All too often when religion meets public policy, rancor is the norm. This is surprising. After all, many of America's most deeply held political claims, past and present, stem from religious commitment. Consider prophetic abolitionism and the fervor with which religiously inspired activists such as William Lloyd Garrison pushed for a cleansing through blood as the only answer to chattel slavery. Most religiously grounded claims are not as stark as Garrison's, of course. But some Americans—including many opinion makers—hold that religion necessarily narrows rather than expands the horizon of civic possibility.

Thus, while claiming to respect religious belief, they insist people keep it to themselves. This is precisely what a devout person cannot do. For religious faith isn't a private affair; it is constitutive of membership in a particular body—the church, the temple, the mosque, the synagogue. Persons of faith cannot bracket their beliefs when they enter the public square.

In viewing religious belief as a civic peril, we invite an irony. We fret about belief that is too ardent but also about the loss of belief, including the loss of democratic faith. If we push too far the notion that, in order to be acceptable public fare, all religious claims and categories must be secularized, we wind up depluralizing our polity, which also endangers our democracy. Yet this is precisely what many in the academy and the media seek to do by demonizing those they call indiscriminately "the Christian Right."

Enter Cardinal Bernardin, who, in a speech delivered this September at Georgetown, suggested that "we think of the role of religion in our society in terms of three questions: church and state, church and civil society, and finally religion and politics." The church-state relationship is "narrow, juridical and institutional in character" and it "essentially affirms that religious communities should expect neither special assistance from the state nor any discrimination in the exercise of their civil and religious activity in society."

The second dimension involves civil society: "the relationship, networks, institutions and associations that lie beyond the state." It is a terrible mistake to carry the logic of church-state separation over into civil society, for to "endorse a properly secular state, which has no established ties to any religious institution, does not imply or mean that we should support a secularized society, one in which religion is reduced to a purely private role." Religion and politics cannot be convincingly separated: each claims much of the same territory as its concern. Were separation to be fully effected, "we would be a poorer culture and society," for "there is a broad area in which religious ideas and institutions can contribute to issues as diverse as strengthening the family, humanizing the drive of economic competition and defining our responsibilities as a nation in a very changed world."



Bernardin addressed those skeptical of a public role for religion by submitting three ways in which religious traditions enrich democratic civil society. The first concerns a "consistent ethic of life." Consider, for example, Kevorkianism, with its reckless rush toward state-sanctioned euthanasia in the name of "free choice." How easy it would be, in a culture of productivity and cost-benefit analyses, to rationalize the ending of human life on a massive scale. It is this horror that an ongoing witness on behalf of human dignity seeks to forestall.

A second contribution religion makes to civil society "is through the ministry and work of religious institutions of education, health care, family service and direct outreach to the poorest parts of our society." Bernardin insisted, rightly, that "it is the time to think intensively about how a more extensive public-private pattern of collaboration could serve to extend the range of effectiveness or these institutions and at the same time use scarce public resources more efficiently in support of human needs."

Finally, religious communities contribute to civil and moral formation. Because religion teaches service to one's neighbor, it enriches civic participation. Bernardin pointed out that the work of a small army of scholars now points to "the way in which religious affiliation has a decisive impact on the kind of civic engagement in which individuals participate, particularly engagement in the service of others."

This sounds so eminently decent, why do so many disagree? Bernardin suggests that much of the animus against religious participation in public life stems from the style of that engagement, "the way religious communities speak to the political process." He argues that a difference should mark the way persons of faith "speak within the church, ... participate in civil society, and ... address the state on law and policy." Within the church, "the full range of biblical, theological themes that structure our belief should be used. Within civil society, explicit appeal to religious warrants and imperatives is both legitimate and needed if we are to address some of the profoundly human themes that are at the heart of our policy debates. But when we address the state ... we should be ascetic, that is, sparing, in our use of explicitly religious appeals." Why? Because at that point, "we accept the responsibility of making our religiously grounded convictions intelligible to those who do not share the faith that yields these convictions."

The style of religious witness, Bernardin concludes, "should constantly be a testimony to the theological virtue of charity, which in turn produces the civic virtue of civility." Each of the interrelated aspects of religious witness rely on the concept of solidarity. Solidarity "implies a fabric of moral bonds that exists among humans because of a shared sense of personhood, and this solidarity sustains personal relationships; it supports the many efforts of civil society; it helps to define the responsibility of the state and citizenry." Joseph Cardinal Bernardin practiced what he preached—a consistent ethic of life, life that he regarded as a gift and a wonder, life that requires protection and nurturance from beginning to end. He told his fellow Catholics and his fellow citizens that a society that assaults and demeans the "least among us" is a society that has set upon a path of slow, culturally sanctioned suicide. The logic of his own witness required that he offer that witness in tones that were generous, welcoming, yet firm. Joseph Cardinal Bernardin: rest in peace.

JEAN BETHKE ELSHTAIN

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BOOKS & The Arts

Stanley Kauffmann on Films

Cracking Credibility

The hero of **The English Patient** (Miramax) is John Seale. This Australian cinematographer, who won prizes at home before he came here, shot *Witness, Rain Man, Dead Poets Society* and *Gorillas in the Mist.* Though all of them were notably done, they still were not harbingers of this latest superlative work. *The English Patient* is set mostly in Italy and the Egyptian desert (with Tunisia substituting for the latter), and from the first frames, Seale fixes a visual mode of seriousness and purposeful beauty—as distinct from album cover *tutti frutti.* Italy can be bungled even by Italians; remember *Stealing Beauty.* Seale just lets Tuscany appear before us as it is, which is enough for any mortal. And the desert! I thought I'd never see anything to equal Freddie Young's work in *Lawrence of Arabia,* but Seale is certainly a contender. He makes the desert golden, mysterious, voluptuous.

In doing all this, Seale takes on a responsibility. His artistry leads us to expect a film of gravity and depth, but this turns out to be sadly untrue. For the first half or so, *The English Patient* is excitingly promising. Then the screenplay goes rotten, like an overripe melon. The director, Anthony Minghella, adapted the script from Michael Ondaatje's novel (unread by me); and after a series of vivid, laconic episodes that move back and forth between Egypt—before and during World War Two—and wartime Italy, the story suddenly splays into lush romantic melodrama. Evelyn Waugh degenerates into *Beau Geste* and *The Garden of Allah.*

Ralph Fiennes is a member of a desert mapping expedition just before the war. Kristin Scott Thomas is the wife of another member who brings her out there to camp along with them in the middle of nowhere. Fiennes is fierce, incisive, like a gleaming knife, in a performance of much more clarity than the writing of his role. Scott Thomas is no well of resonance, but she is quite moving as a woman whose social maxim has been Keep Control and whose emotions erupt. The Fiennes-Scott Thomas relationship in the desert and in Cairo is the picture's core, and is quite gripping until it decomposes into pulp.

There are two other plots, which I can't explain without spilling some (gassy) beans. I can note that Juliette Binoche is a Canadian army nurse in Italy who is in charge of Fiennes after he is severely burned. (This is the title character, though the man isn't English.) Unaccountably, Binoche detaches herself and Fiennes from her unit to tend to him in a deserted monastery. A Sikh bomb-disposal expert turns up, and Binoche, nicely delicate throughout, gets involved in a sidebar plot that simply distends the picture. And Willem Dafoe turns up, too, as a man who has reasons to revenge himself on Fiennes.

The editing and sound mixing were safe in the mastery of Walter Murch. Minghella's direction certainly conveys complete subscription to the film. But what happened to the second half that ought to have been as credible as the first half?

Well, at least Seale makes it all look good.

Another fracture, except that this one occurs sooner. **Breaking the Waves** (October) begins in a ferociously realistic manner. The place is the northern coast of Scotland near the offshore oil rigs. The countryside is somber, the weather demanding, and the general temper of the local Scots is unsurprisingly dour. The writer-director, Lars von Trier, frequently uses a handheld camera (the hands are Robby Müller's), with lots of whip pans from face to face within scenes, instead of cutting from one person to another. The intent is to wipe out any sense of artifice; but the screenplay sticks artifice right back in.

The story links religion and love. It opens with Bess, a villager, being quizzed by the elders of her church because she wants to marry Jan, a Scandinavian worker on the oil rigs. Bess is sensitive, devoutly religious, and (a Scottish word) fey. She and Jan marry, and our suspicion of imbalance in her is heightened when she insists on losing her virginity in the ladies room of a hotel while the wedding party is progressing downstairs.

Her imbalance becomes blatant when Jan has to go back to his rig. She behaves as if he were going off for years, far away. She prays that he will return soon. On the rig Jan has an accident, and he does return soon—paralyzed. Her prayer has been answered. She feels responsible.

The picture's slide into Bess's hysteria, her neurosis, might in itself have interest if von Trier had not made God so neat an

FILMS WORTH SEEING

Everyone Says I Love You. *Coming soon. Woody Allen's musical, dexterously deploying 1930s songs in present-day Manhattan, Venice and Paris. Except for Allen himself, exceptionally pleasant. (Reviewed 11/11/96)* **Secrets & Lies.** *In London a young black woman, a successful professional raised by a foster mother, discovers that her real mother is working-class white. Excellently acted, if too tidily tied up. (9/30/96)* **Shine.** *A re-enacted true story. A young Australian pianist is forced into neurosis by a too loving, too demanding father. Admirable acting, including a small part by John Gielgud. (11/18/96)* **William Shakespeare's Romeo and Juliet.** *It isn't Shakespeare. It's a translation into 1990s music video, set in South Florida. But the director, Baz Luhrmann, has destructive-constructive imagination. (12/2/96)* **—SK**

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accomplice. The bed-bound Jan asks Bess to have sex with other men and to tell him about it: this, he says, is their only way to remain physically close. After consulting God—she herself does God's voice in these conversations—she obliges Jan, sinking further and further into depravity in the service of her husband and God. At last, the supreme sacrifice, and the result, by heaven—by von Trier's heaven, anyway—is a miracle, too embarrassing to specify. God apparently is satisfied.

Mortals may not be. For this mortal, the film converts piety into pathology and then converts it back again at the end with a *Song of Bernadette* conclusion. I don't know what the title means. I do know that this ridiculous film won the Grand Jury Prize at the 1996 Cannes Film Festival. As Jan, Stellan Skarsgård is bland. As Bess's sister-in-law, Katrin Cartlidge is outstandingly sympathetic. As Bess, Emily Watson shows that she has finely calibrated responses at her command; but she has to do so much caterwauling that the script forces her to become tedious.

In **Ransom** (Touchstone) there is one fine three-minute episode. Dan Hedaya plays a union official who is in jail for bribery and who is visited by Mel Gibson, a successful businessman who paid a bribe and got away with it and who is responsible for the other man's conviction. Hedaya comes into the visitor's room as charged with hate as Jove is with thunder. That hate carries him forward on a swelling wave until it crests and he is dragged away by guards. This brief scene could be studied in acting schools as an example of how to enter a room from the very center of a character's life.

It's the only really interesting scene in the picture. The rest of the script is a relatively routine story of kidnapping—the victim is Gibson's young son—with the action split between the anguished parents and the kidnappers. (As usual there's one weakling among the criminals; this time he's a drunk.)

Ransom is also an example of how to waste an exceptional actor. Gary Sinise, the lieutenant in *Forrest Gump*, here has a part that is confined to large chunks of thriller cliché. The same is true of a rising actress, Lili Taylor. Rene Russo, though not in the stratum of their talent, has to deal with her own clichés as the boy's mother. Gibson does less well as her husband. For all the film's frantic editing, it never really takes off, principally because of Gibson. He never seems concentrated, really present. He was better as Hamlet. •

O. J. Simpson, critical race theory, the law, and the triumph of color in America.

The Bloods and the Crits

By Jeffrey Rosen

I.

During the past decade, an academic movement called critical race theory has gained increasing currency in the legal academy. Rejecting the achievements of the civil rights movement of the 1960s as epiphenomenal, critical race scholars argue that the dismantling of the apparatus of formal segregation failed to purge American society of its endemic racism, or to improve the social status of African Americans in discernible or lasting ways. The claim that these scholars make is not only political; it is also epistemological. Our perception of facts, they maintain, is contingent on our racially defined experiences; and, since the white majority can never transcend its racist perspectives, formally neutral laws will continue to fuel white domination. The prevailing mood is fatalism.

For these and other reasons, critical race theorists have largely rejected law as an instrument of racial progress and turned instead to extralegal prescriptions. Some scholars advocate an intellectual strategy that has been described as "storytelling": they call for the creation of counternarratives of black empowerment that might help to challenge the dominant racial paradigms, and they have celebrated stories, such as conspiracy theories, that are widely accepted in the black community, even though they are factually untrue. Other scholars are even more radical: they have suggested that black jurors may nullify certain laws if sending guilty black defendants to prison would not serve the instrumental goals of the black community. For these scholars, black lawbreaking is a form of black self-help, a legitimate way of adjusting the scales after centuries of racial oppression.

All this represents, to put it mildly, a stark challenge to the liberal ideal of the rule of law. And the challenge is not merely academic. Despite the subversiveness of the descriptive and prescriptive claims with which critical race scholars confront American society, the rhetoric of the movement is already reverberating beyond the lecture hall and seminar room. It is finding echoes in the courtroom, too, and in popular culture. Gangsta rappers call openly for race war. A new movie, *Set It Off*, admiringly portrays a group of young, attractive African American women who decide to rob banks as a form of self-empowerment, and then go on sisterly shopping sprees with their ill-gotten gains. And surely the most striking example of the influence of the critical race theorists on the American legal system is the O.J. Simpson case, in which Johnnie L. Cochran dramatically enacted each of the most controversial postulates of the movement before a transfixed and racially divided nation. Indeed, Cochran's strategy in the courtroom might be best described as applied critical race theory.

How could an academic movement that lurked only a few years ago at the fringes of the academy have resonated so forcefully with our legal and popular culture? One explanation, perhaps, is the willingness of some of the most distinguished members of the American bar to popularize the premises of critical race theory and to soften its more unsettling conclusions. Consider A. Leon Higginbotham, Jr.

It is difficult to imagine a loftier pillar of the American legal establishment. The son of a maid and a factory laborer, Higginbotham attended a segregated school in Ewing Park, New Jersey, graduated from Purdue University and Yale Law School, and clerked on the Pennsylvania Supreme Court for Justice Curtis Bok, the father of the future president of Harvard. After working for the district attorney of Philadelphia, and representing personal injury plaintiffs for a few years, Higginbotham was appointed by

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President Johnson to the U.S. District Court in Philadelphia in 1964, at the age of 35. Promoted to the U.S. Court of Appeals for the Third Circuit by President Carter in 1977, Higginbotham became Chief Judge in 1989. In 1993, he stepped down from the bench, and a year later he became the first Public Service Professor of Jurisprudence at the Kennedy School of Government. A recipient of the Presidential Medal of Freedom, he continues to practice law at the Paul, Weiss firm in New York, and he sits on the boards of the U.S. Civil Rights Commission, *The New York Times* and other estimable institutions. He was recently retained by Texaco Incorporated, after allegations that senior executives had made racist statements, to refurbish the company's "human relationship policies and practices." And this mandarin of mandarins has just published a book, *Shades of Freedom*, which attempts to put a benign face on the critical race scholars' racialism. Never mind that his life is a devastating refutation of his analysis.

In his first book on race and the American legal process, *In The Matter of Color*, which appeared in 1978, Higginbotham described the role of law in subjugating blacks during the colonial period. In examining the origins of slavery in colonial America, Higginbotham focused on the statutes and the judicial opinions of six colonies: Virginia, South Carolina and Georgia in the South, and Massachusetts, New York and Pennsylvania in the North. Although the book was respectfully received as an accurate description of the evolution of legal doctrine, Higginbotham was criticized for the selectivity of his focus. He was taken to task, for example, for oversimplifying the political status of African Americans in the eighteenth-century South. In every Southern state except the three that Higginbotham singled out, free blacks were permitted to vote until sometime around the War of 1812. As for the North, in New Jersey, there is some evidence that slaves were legally permitted to vote in general elections; and Maine, New Hampshire and Vermont by the end of the eighteenth century gave their small black population almost total *de jure* equality with whites.

If Higginbotham's first book presented a narrowly doctrinal portrait of the evolution of slave law during the colonial period, his second book is far more ambitious. He wishes to bring his project up to date by examining the racial presumptions of the American legal system from the seventeenth century through the twentieth century. Higginbotham's "dominant perspective," he says, is "the role of the American legal process," between 1619 and 1996, "in substantiating, perpetuating, and legitimizing" what he calls "the precept of inferiority," which he defines as: "Presume, preserve, protect, and defend the ideal of the superiority of whites and the inferiority of blacks."

Shades of Freedom might be called an anti-Whig history of race and American law. Higginbotham's thesis is that the "precept of black inferiority" was "presumed" during the colonial era, "carefully defined" and "ruthlessly enforced"

Shades of Freedom:
Racial Politics and Presumptions of the American Legal Process
by A. Leon Higginbotham, Jr.
(Oxford University Press, 304 pp., $30)

Journey to Justice
by Johnnie L. Cochran, Jr. with Tim Rutten
(One World/Ballantine Books, 383 pp., $26)

In Contempt
by Christopher Darden with Jess Walter
(Regan Books/HarperCollins, 387 pp., $26)

The Run of His Life:
The People v. O.J. Simpson
by Jeffrey Toobin
(Random House, 466 pp., $25)

American Tragedy:
The Uncensored Story of the Simpson Defense
by Lawrence Schiller and James Willwerth
(Random House, 702 pp., $27.50)

The Coming Race War?
And Other Apocalyptic Tales of America After Affirmative Action and Welfare
by Richard Delgado
(New York University Press, 198 pp., $24.95)

Critical Race Theory:
The Key Writings That Formed the Movement
edited by Kimberlé Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas
(The New Press, 494 pp., $30)

Law's Stories:
Narrative and Rhetoric in the Law
edited by Peter Brooks and Paul Gewirtz
(Yale University Press, 320 pp., $30)

between 1662 and the 1830s, "defended and protected" from the 1830s until the end of the Civil War, "did not die" after Reconstruction, and continued to distort and disfigure the American system even after 1954, "once the more oppressive forms of segregation were eliminated." Higginbotham concludes with a rather remarkable appendix enumerating what he calls "The Ten Precepts of American Slavery Jurisprudence." These include Precept One, "Inferiority," and Precept Three, "Powerlessness." Higginbotham defines the latter this way:

> Keep blacks—whether slave or free—as powerless as possible so that they will be submissive and dependent in every respect, not only to the master but to whites in general. Limit blacks' accessibility to the courts and subject blacks to an inferior system of justice with lesser rights and protections and greater punishments. Utilize violence and the powers of government to assure the submissiveness of blacks.

According to Higginbotham, "the precepts pertaining to inferiority and powerlessness continue to haunt America today," nearly a century and half after the Emancipation Proclamation. "The precept of black inferiority," he writes,

> is the hate that raged in the American soul through over 240 years of slavery and nearly ninety years of segregation. Once slavery was abolished, and once the more oppressive forms of segregation were eliminated, many whites' hate still had not lost its immediate object. The ashes of that hate have, over the course of so many generations, accumulated at the bottom of our memory. There they lie uneasily, like a heavy secret which whites can never quite confess, which blacks can never quite forgive, and which, for both blacks and whites, forestalls until a distant day any hope of peace and redemption.

Judged as a historical narrative, Higginbotham's argument is crude. He insists that pure racism, fueled by "sex and religion," rather than a shifting and complicated combination of economic, political and ideological factors, was the overwhelming catalyst for the legal subordination of African Americans in the pre-revolutionary period. This leads him to neglect a great deal of countervailing evidence and to slight important nuances that might complicate his argument about the centrality of racism in American law. To take just one example of his selectivity: Higginbotham emphasizes that, in the late seventeenth and early eighteenth century, Virginia enacted a statute providing that it was not a felony for a master to kill a recalcitrant black slave, because the slave was the master's property, and the master could not be presumed to have the requisite malice to "destroy his own estate." He fails to note that Virginia, in 1788, repealed the statute of 1705 that made the manslaughter of a slave a non-offense, and began to treat the killing of slaves as murder rather than as trespass to chattel. (Indeed, two of Jefferson's nephews were prosecuted for killing their own slaves.)

The repeal of the Virginia statute, as Robert Cottrol has observed, was part of an unsuccessful effort to reconcile slaveholding with the rise of liberal ideology in the late eighteenth century. As the

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rise of Lockean liberalism brought the practices of chattel slavery into sharp question, the South increased legally mandated racial restrictions while providing, at least in theory, more procedural protections for the slaves under criminal law. By codifying a racist ideology that emphasized black inferiority, while also emphasizing the South's paternalism toward the dependent Negro, the antebellum South attempted to maintain the fiction that slavery was good for the slaves.

Cottrol's picture is not pretty, but it is less simple and less teleological than Higginbotham's view that Virginia society from the seventeenth century onward "had fully accepted the idea that blacks were not quite human." It serves Higginbotham's purpose to portray American history as an unbroken tale of racial oppression. To sustain his narrative, however, he must coarsen history and erase distinctions, most jarringly in his treatment of abolitionism and Reconstruction. His chapter on "The Politics of Inferiority, 1830-1865" is subtitled: "Abolition and Uncle Tom: Political Posturing Without Challenging Notions of Inferiority." In fourteen highly tendentious pages, he belittles the motives and achievements of abolitionists such as William Lloyd Garrison and Harriet Beecher Stowe. In his view, Garrison and Stowe sustained "the precept of inferiority" by taking the view that "blacks were infantile saints who needed to be protected and who could not even understand their own need for freedom and equality." Here is Higginbotham on Stowe: "One reads a book such as *Uncle Tom's Cabin*, or other antislavery articles and speeches of the time, with the nagging suspicion that the sweet-tasting flesh of the fruit of the abolitionists' good works was wrapped around a hard and bitter seed of contempt for the very group they were trying so hard to free."

At one point Higginbotham seems to recognize the absurdity of his attempt to judge nineteenth-century radicals by the standards of twentieth-century radicals. "Is it too much to expect Mrs. Stowe to have depicted Uncle Tom," he asks, "with the character traits and political beliefs of, say, Malcolm X?" Well, yes, it is. (And why, exactly, should the virtue and the truth of Malcolm be assumed?) And he proceeds to ignore his own warning, concluding that "abundant good intentions aside, the abolitionists' view of African Americans served to sustain the precepts of inferiority."

In addition to the historical crudity of holding the icons of the past to the standards of the present, Higginbotham's refusal to engage the abolitionists on their own terms undermines his thesis that the Reconstruction Republicans deserve little credit for attempting to purge the American Constitution of its presumptions of racial inferiority, even before the Reconstruction Amendments were eviscerated by the Supreme Court. Although Higginbotham quotes from the Reconstruction debates, at no point in his book does he acknowledge the basic distinction that was embraced by black and white Republicans, who held that civil rights, but not social rights or political rights, should be extended to all citizens regardless of race.

By disclaiming any intention of achieving equal "social" rights for African Americans, Republicans from Lincoln and Sumner to John Marshall Harlan implied that a black man had no right to dine at a white man's table or to insist that whites must associate with blacks in the private sphere; and in this sense they were indeed racist. At the same time, the Republicans aspired to purge much of the public sphere of racism by insisting on formal color-blindness in the assignment of civil rights—which included, in their view, the right to make and enforce contracts, to sue and be sued, to inherit property, and to gain equal access to public accommodations, such as railway cars and theaters.

In his eagerness to portray American history pessimistically, as a narrative of uninterrupted racism, Higginbotham elides the distinction between social, civil and political rights. He quotes a black congressman from Mississippi, John R. Lynch, arguing for the Civil Rights Act of 1875 by insisting that "it is not social rights we desire. We have enough of that already. What we ask is protection in the enjoyment of *public* rights. Rights which are or should be accorded to every citizen alike." According to Higginbotham, Lynch's speech "demolished the idea that African Americans should not take part in politics because they were intellectually inferior to whites and therefore incapable of such high responsibilities of citizenship." In fact, political participation was not considered fundamental to the "high responsibilities of citizenship": women were citizens, but they could not vote. Neither the Civil Rights Act nor Lynch's argument had anything to do with equality of political rights; both sought equality of civil rights.

As it turned out, of course, the Supreme Court, in the Civil Rights Cases of 1883, subverted even the narrow vision of formal equality that the Republicans had attempted to enshrine in the Fourteenth Amendment to the Constitution:

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the justices struck down the Civil Rights Act of 1875 on grounds plainly inconsistent with the original understanding of its framers. Equal access to streetcars and theaters, the Court held erroneously, was a social right, rather than a civil right; and, therefore, Congress lacked the power to forbid discrimination in places of public accommodation. The promises of the Reconstruction Amendments would lay dormant for another eighty years, when they were finally fulfilled by the Civil Rights Acts of the 1960s.

Still, Higginbotham is wrong to believe that the racism of the Reconstruction Republicans was formally enshrined in the American Constitution, as he is wrong to believe that "most whites" in the Reconstruction era "were unwilling to live alongside African Americans as equal citizens." In fact, the Republicans sought to separate their private racism from their aspirations for civil equality. The tragedy of Reconstruction was not, as Higginbotham suggests, that the Civil War amendments failed to eliminate private "presumptions of inferiority" from the hearts and minds of white Americans, but that the constitutional guarantee of equal civil rights, or equal privileges and immunities, for all citizens was so cavalierly thwarted by unelected judges and racist officials.

Higginbotham's historical chapters are more polemical and less balanced than one expects from a man whom Henry Louis Gates Jr. calls "the major scholar of this field." And his thesis is a little trite. The argument that American law reflected and sustained presumptions of racial inferiority from the colonial period until the *Brown* decision in 1954 is hardly controversial. At least until the Civil Rights Acts of the 1960s, as Higginbotham vividly demonstrates, American statutes and judicial opinions formally enshrined racism of the starkest kind. Far more radical is Higginbotham's argument that the civil rights movement of the 1960s, rather than representing a meaningful break with the past, had little success in uprooting the "precept of inferiority." That precept, writes Higginbotham, "has persisted even to recent times, when many of the formal, overt barriers of racism have been delegitimized.... [I]t is probably still helpful to note contemporary incidents of the last decade that will illustrate the continuum up to today of the precept of inferiority that began in an era of slavery centuries ago."

This allegation of a perfect continuity is an explosive charge. What "contemporary incidents of the last decade" does Higginbotham offer to support it? In his introduction, he points to six recent cases in which "a white person made false accusations that an African-American man had committed a terrible crime." These include Susan Smith's claim that an armed black man kidnapped her children and Charles Stuart's claim that a black man fatally shot his pregnant wife. According to Higginbotham, "I begin with these events because I believe that there is a direct and tragic nexus between the false allegations and perceptions of today, as we approach the end of the twentieth century, and some of the perceptions of black inferiority that have endured from the colonial period to the present."

But what on earth does Susan Smith have to do with the Black Codes of the antebellum South? Higginbotham says that in 1996, as in 1619, "the public perception of African Americans as inferior and venal beings provides the basis of acceptability for the most outrageous of

lies." But this is bewildering, or worse. In *all* of the cases that Higginbotham mentions, the legal system exposed the false accusations against African Americans as a racist hoax, and brought the real murderers to justice. And, once they were exposed, each of these racist lies quickly became a national outrage, and each of the perpetrators was, appropriately, shunned and vilified in the starkest terms. Far from being misled by racial presumptions of inferiority, prosecutors and judges scrupulously resisted the temptations of racialism, and color-blind justice prevailed.

In a chapter called "Unequal Justice in the State Criminal Justice System," Higginbotham repeats his explosive thesis: "To use Cornel West's felicitous phrase, 'Race [m]atters.'... Unfortunately, I remain confident that even today there are many cases whose outcome can be explained only by way of racial considerations." But again Higginbotham points to no contemporary cases to support his assertion. As an example of "Apartheid in the Courthouse," he cites a case concerning segregated seating in the courtroom from 1948; but then he acknowledges that it was overturned in 1963. In a section called "Overt Discrimination by Judges in the Courtroom," he cites a case from 1963 in which a trial judge held a black witness in contempt after she refused to answer a prosecutor who addressed her by her first name; but then he acknowledges that the contempt judgment was summarily reversed by the Supreme Court. Higginbotham's most recent example of judicial misconduct is a California superior court judge who, in 1982, made racist comments off the bench; but then Higginbotham himself concedes that the judge was publicly censured by the California Supreme Court. How all of this adds up to what Higginbotham calls "a jurisprudential culture" of "black inferiority" in the state criminal justice system today is hard to discern.

II.

Hard to discern, that is, until one examines the unstated epistemological premises that lurk behind Higginbotham's claims. For Higginbotham's thesis fits comfortably within the critical race theory movement, and, although he shies away from some of its most extreme conclusions, he shares many of its troubling assumptions. While Higginbotham gives the legal revolution of the 1960s some credit for moving our nation "from total oppression to varying shades of freedom," he shares the conviction of critical race scholars that the achievement of "formal equality" has failed to eradicate the endemic racism that African Americans encounter in their daily lives. "My view is that those past and present instances of racism are more than mere aberrations or isolated blemishes that occasionally crop up and mar the normally effective dispensation of justice," writes Higginbotham. "Rather, they are symptoms, signals, and symbols of racism in the broader society." As for the prospect of eradicating the precept of inferiority in the foreseeable future, Higginbotham shares the pessimism of the critical race movement. Thus he writes that "for many, there still persists a nagging doubt as to whether the legacy of legally sanctioned racism will be eradicated in this decade or even in the next century."

The view that blacks experience racism as normal rather than exceptional leads some critical race scholars to a vulgar racial essentialism. The daily experience of racism, they hold, leads blacks to perceive particular events in American

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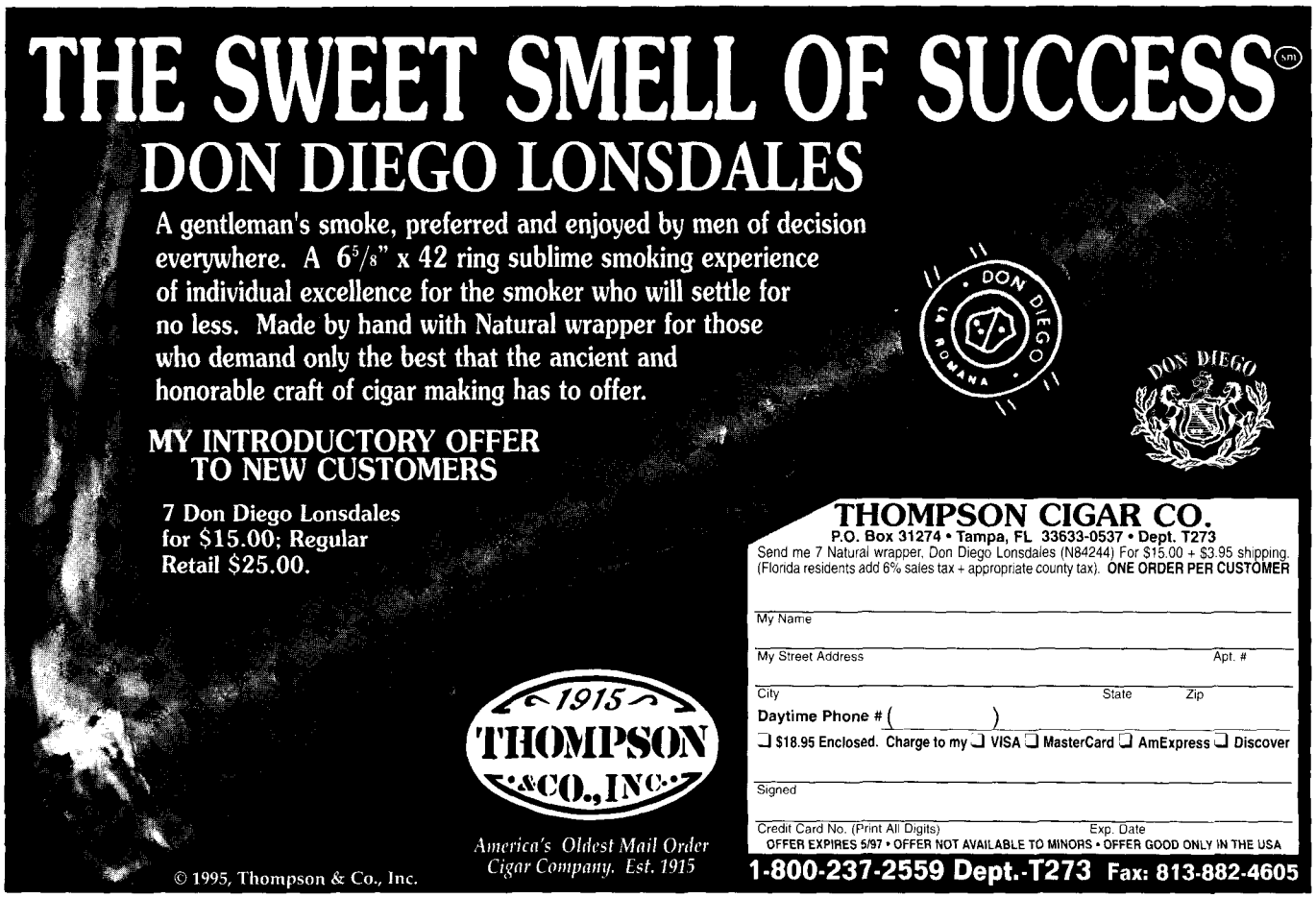
law and culture differently than whites, and so those who dissent from the black perspective are not really black. Attacking racism, these scholars promote racialism. Perhaps the thrall of essentialism helps to explain the vehemence of Higginbotham's obsessive attacks on Justice Clarence Thomas, whom he has repeatedly assailed for racial self-hatred. "Many white judges share an underlying belief about the rarity of racist occurrences in the courtroom," Higginbotham writes in *Shades of Freedom*. "In contrast, I know of only one African American federal judge [he means Thomas] who minimizes the significance of the fact that societal racism, even unintentionally, often affects the adjudicatory and fact-finding process of courts."

If racism is endemic, and if our perception of facts is racially contingent, and if neutral laws fuel white domination, then what is the cure for what Higginbotham calls "the precept of inferiority"? Critical race scholars view litigation, the traditional remedy of the civil rights movement, as an ineffective avenue of relief. As Derrick Bell argued in 1976, the legal goal of integration responded to the political ideals of white public interest lawyers rather than the "actual interests" of black communities themselves. Rejecting law as an engine of social change, Richard Delgado seems to endorse two extralegal prescriptions: storytelling and legal instrumentalism, or black "self-help."

Like his earlier book, *The Rodrigo Chronicles*, Delgado's new book, *The Coming Race War?*, is itself an exercise in storytelling. It takes the form of a fictional dialogue between two characters, Rodrigo, the brilliant African American student, and his doting "Professor." In his forward to Delgado's book, Andrew Hacker defends the storytelling movement on the grounds that African Americans have a less linear approach to ratiocination: "Black culture tends to be at home with what might be called a discursive style, which takes a more forthright approach to intellectual inquiry. Instead of being bound by rigid rules, the search for truth should encourage a more relaxed ambience." The condescension in those sentences is amazing. And in the same vein, Delgado, speaking through Rodrigo and the Professor, complains that "the basic problem is the legal narrative: One simply cannot tell stories of many kinds of injustice through law." The traditional protocols of the courtroom favor the powerful, rather than "society's outcasts," because "the rules of courtroom etiquette require that one not use emotional discourse, that one speak within the legal paradigm, adhere to rules of evidence that carve one's narrative into little pieces, destroying its momentum and integrity."

In its weakest form, legal storytelling is nothing more than a proposal for broadening the narratives available to judges and juries, to help them get (quite literally) to the bottom of things. Instead of being limited by a legal system that "disaggregates and atomizes" communal grievances into individual disputes, Rodrigo recommends that litigants think about group grievances rather than their own, and tell "the broad story of dashed hopes and centuries-long mistreatment that afflicts an entire people and forms the historical and cultural background of your complaint." Insisting that dominant groups (that is, whites) protect their own interests by constructing social reality through language, other critical race theorists stress the importance of counternarratives by "voices from the bottom" that emphasize context and personal experience. These storytellers maintain that African Americans not only have different experiences, they also have different ways of communicating and understanding them. The "voice of color" is said to be emotional rather than analytical, less concerned with descriptive accuracy than with personal authenticity.

In its most radical form, the storytelling movement is a direct assault on the possibility of transracial agreement,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on the possibility of objectivity. Drawing on strains of literary theory, some critical race theorists claim that no event or text has an objective meaning, that each community of readers must determine how the text will be understood, that every community has a responsibility to create its own stories out of every text. Of course, if the community of readers is racially defined, and if no racial community can extricate itself from its socially constructed perspectives, then our perception of facts will be racially contingent.

This cult of contingency may be bracing, or forgivable, in literature departments, where what is at stake is the interpretation of *Huckleberry Finn* or the boundaries of the canon. For the law, however, the cult of contingency holds the seeds of nihilism. Judges, juries, lawyers and legal scholars are charged, among other things, with being objective; and if objectivity is unattainable, then so is the rule of law itself.

Perhaps the most famous example of storytelling as an invitation to relativism is Patricia Williams's description of the Tawana Brawley hoax in *The Alchemy of Race and Rights*. Brawley was discovered in a vacant lot with cigarette burns and dog feces on her body, and falsely claimed that she had been raped by a group of white men. But Williams is not concerned with the truth of Brawley's claim. She is concerned with its social meaning: "Tawana Brawley has been the victim of some unspeakable crime," Williams wrote in 1991.

> No matter who did it to her—and even if she did it to herself. Her condition was clearly the expression of some crime against her, some tremendous violence, some great violation that challenges comprehension. And it is this much that I grieve about. The rest of the story is lost, or irrelevant in the worst of all possible ways.

But the rest of the story, of course, is not lost or irrelevant. Al Sharpton and the other collaborators in the Brawley scam were guilty of more than narrativity. At no point in her essay does Williams acknowledge that Brawley made her story up; that it was fiction, not fact. Instead Williams worries that those who doubted Brawley's fiction are reinforcing an oppressive narrative. According to Williams, "Tawana's terrible story has every black woman's worst fears and experiences wrapped into it. Few will believe a black woman has been raped by a white man." In Williams's world, as Larissa MacFarquhar nicely put it in *Lingua Franca*, "a black woman who *has* been raped by a white man and a black woman who was unhappy enough to *say* she was raped by a white man and even 'every black woman' blur together into an even thicker epistemic, mythical fog than they already inhabit."

Higginbotham does not explicitly endorse storytelling as a cure for racism. Perhaps he has too much experience of the real world to think that the ills of the inner city will be cured by a variety of post-structuralism. Like Williams and Delgado, however, Higginbotham appears to be more concerned by the social meaning of racially charged accusations than by the facts underlying them. Nothing else could explain his fixation on the racist stories told by Susan Smith and Charles Stuart. Perhaps he is suggesting that, as forms of hate speech, they have the power to stigmatize African Americans, and so must be challenged by counternarratives. On this point, Higginbotham approvingly cites Charles Lawrence's definition of racism as "the systematic imputation of stigma onto African Americans through the courts and through extralegal actions." Lawrence proposes that whenever "the culture thinks of an allegedly discriminatory governmental action in racial terms," regardless of the actual facts or motives underlying the controversy, the action should trigger the strictest judicial scrutiny.

The *reductio ad absurdum* of the storytelling movement, with its celebration of subjectivity over objectivity, of emotion over truth, is the scholarly romanticizing of black conspiracy theories by Regina Austin. (The refusal of Harvard Law School to hire Regina Austin in 1990 prompted Derrick Bell, the founder of the critical race studies movement, to resign from the faculty in protest.) Last year, in an essay called "Beyond Black Demons & White Devils: Antiblack Conspiracy Theorizing & The Black Public Sphere," Austin reviewed empirical evidence suggesting that blacks are more likely to believe race-related conspiracy theories, while whites are less suspicious of government. "Without access to the information that has become a prerequisite for the daily consumption of highly literate sophisticated consumers," Austin writes, "some blacks rely on conspiracy notions to protect themselves from excessive manipulation, economic abuse, and physical harm." Rather than lamenting the prevalence of conspiracy theorists today, however, Austin condescends to those who embrace them:

> Even though conspiracy theorizing is far from an ideal form of discourse and leaves much to be desired as a manifestation of black critical judgment, it has its usefulness. Because I respected the speakers, I felt compelled to investigate the speech. What I found leads me to believe that antiblack conspiracy theorizing is not all bad. Whether the theories are true or not, I would argue that the theories themselves reveal much about the concerns of contemporary blacks regarding law, medicine, economics, politics, and the media, and warrant serious consideration on that account. The theories represent critiques of major institutions and social systems by a people who are and have been foreclosed from full participation in them. Antiblack conspiracy theorizing generates a counter-response to exclusion and discrimination by mobilizing collective black self-interest in a way that contributes to the growth and the strength of the black public sphere.

How, precisely, the belief that the AIDS virus was planted in Africa to ravage black people, or that the slaughter of

Letter Home

I am asking again
because who knows if not you?
You with all those constellations
held bright against demise.
You were the one looking always askance,
scanning the landscape for height,
your fists already in the future.

And now I am here, dreadful
generosities upon me again
demanding their lineage,
the history of my constant deliverance.
Out in the alley, diamonds drop
from gutterspout to ground.
At night the blinds are gilt
with seeping light.

What else can I tell you?
I am writing tonight to say
that I find myself vulnerable
to beauty in all its positions,
obscurity notwithstanding,
that I dismantle each day
as it carries itself around the clock
and that nowhere, not once,
have I understood
what has brought me to this.

MELANIE REHAK

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black drug traders by other black drug traders is a conspiracy of white bankers and importers to "destroy black males," or (to take another of Austin's examples) that the prosecutions of Marion Barry, Mike Tyson and O.J. Simpson are part of "a generalized scheme to bring down black men"—how these fantasies contribute to "collective black self-interest" and empowerment, rather than to black marginalization and demoralization, is, for Austin, too obvious to require elaboration. She ventures only the following exegesis: "Blacks who, in analyzing the crack trade, indict the whites who import the drugs, sell the guns, and launder the money for being engaged in a collective effort to destroy black communities are offering a sophisticated reading of contemporary property relations."

Again, the ideas of the seminar room trickle down, or up. In October, *The Washington Post* offered a front-page excursion into Austinian hermeneutics when it tried to explain why the belief is widely held in black neighborhoods that the CIA was behind the crack epidemic in the inner city of Los Angeles. "CONSPIRACY THEORIES CAN OFTEN RING TRUE; HISTORY FEEDS BLACKS' MISTRUST," read the *Post*'s headline. This apologia for African American credulity ran alongside a story that proved that the allegation about the CIA and crack was utterly unfounded. What the editors of the *Post* were saying, then, was this: the allegation is false, but if you are an African American, you may continue to believe it is true. Perhaps they share Austin's sentimental view of conspiracy theorizing as "an obviously imaginative and creative oral folk art form which attempts to grapple critically with the complexities of a postmodern, post-industrial political economy."

In a powerful criticism of narratology, published in *Law's Stories*, the proceedings of a conference on "Narrative and Rhetoric in the Law" held at Yale Law School in 1995, Daniel A. Farber and Suzanna Sherry argue that the storytellers' claim for the persuasive power of emotive language over rational argument resonates also with the indeterminacy embraced by critical legal scholars. Legal reasoning, those scholars hold, does not provide concrete answers to particular legal problems, and legal decisions are ultimately based on social and political judgments about power. There is also, more mundanely, the unfortunate fact that few of the storytellers are gifted at telling stories. Richard Delgado uses his characters as vehicles for provocative speeches about subverting the dominant racial paradigm, interspersed with an ongoing dialogue about their shared affinity for gourmet coffee. "Rodrigo, who had been eyeing my espresso machine, nodded enthusiastically and held out his cup. As he was stirring in his condiments, I asked: 'And I gather you think this lack of empathy is somehow responsible for our current predicament?' 'Thanks, Professor. This is a good blend—a little milder than last time. French roast?' " Alas, storytelling, too, requires rigor.

Fortunately for the critical race movement, a second battle ground has recently opened up as a scholarly cure for endemic racism: "self-help," which, in Delgado's words, "includes selective lawbreaking." Delgado's Rodrigo is cheerfully candid about the virtues of what he calls "legal instrumentalism." He says that "minorities should invoke and follow the law when it benefits them and break or ignore it otherwise—when it gets in the way, is unresponsive or adverse to their interests. We should treat it like any other social institution, the highway department, for example." And later, "We should be zero-based and as dispassionate as possible, choosing legality when doing so will benefit us, and straightforwardly pursuing other means when it does not."

Critical legal scholars have only begun to explore the limits of black lawbreaking as a mechanism for black liberation. But the scholarship is growing starker by the day. In an essay called "'The Black Community,' Its Lawbreakers, and a Politics of Identification," published in 1992, Regina Austin compared "street women [who] accept the justifiability of engaging in illegal conduct to rectify past injustices and to earn a living" to political revolutionaries such as Malcolm X. She calls for "a legal praxis ... [that] would find its reference points in the 'folk law' of those black people who, as a matter of survival, concretely assess what laws must be obeyed and what laws may be justifiably ignored."

And last year, in an article in the *Yale Law Journal* that was later excerpted in *Harper's*, Paul Butler carried the premises of critical race theory to their logical conclusion. Accepting the idea of legal instrumentalism—that blacks should use power, when they have it, to serve the interests of the black community—Butler called on African American jurors to use their power to free guilty black defendants accused of nonviolent drug crimes. Maintaining that the black community would sometimes be better served by freeing guilty black men than by putting them in jail, Butler also pro-

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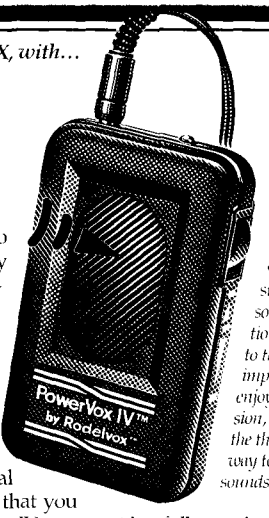

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posed that jurors should make case-by-case determinations about whether or not the black community would be harmed or benefited by freeing black defendants accused of stealing the property of white people. Butler drew the line at calling for jury nullification in cases of murder, which are considered *malum in se*, or inherently immoral. But Butler's proposal is different only in degree from the open race war endorsed by William Kunstler in 1988, when he persuaded a black and Hispanic jury to acquit Larry Davis, a black defendant who had shot six police officers. According to Kunstler, the case was about "how the police treat young Third World people in the depressed communities of the city."

Like most mainstream scholars, Higginbotham has gone out of his way to distance himself from Butler's unvarnished endorsement of jury nullification. Appearing with Butler at a recent symposium in Washington, D.C., on "Race and the Justice System," Higginbotham said: "Professor Butler with eloquence describes the frustration. But at some point we have to move from frustration to solution." Higginbotham's demurral seems more prudential than principled. Butler at least has the intellectual courage to embrace the implications of their shared premises. And in the end it is not unfair to call Higginbotham to account for fanning the flames that Butler lights. By flirting with the epistemological axioms of critical race theory, by belittling the achievements of the civil rights revolution, by agreeing that neutral laws fuel white domination, by exalting racially contingent perceptions as more important than objective facts, by comparing *Dred Scott* to Susan Smith, and by suggesting that the "precept of inferiority" has continued to be embedded in American law and culture in a virtually unbroken parade of horror from 1619 to 1996, Higginbotham has contributed to an intellectual and cultural climate where it is respectable to suggest that race-based juror nullification is an instrument of black liberation. Thank heavens that Higginbotham and Butler, both former prosecutors, are safely ensconced in ivory towers, where their philosophically provocative but politically incendiary ideas cannot be played out in real courtrooms or influence jurors in actual cases.

Enter O.J. Simpson.

III.

Although no critical race scholars have thanked Johnnie L. Cochran for the compliment, the defense strategy in the Simpson case was a textbook implementation of the premises of the critical race movement. Cochran methodically selected an African American jury, predicting correctly that their racially fraught experiences with the police would influence their perception of the facts. He set out, through storytelling and the manipulation of racial iconography, to create a narrative that transformed O.J. from coddled celebrity into the civil rights martyr of a racist police force. He put Mark Fuhrman's racial epithets on trial, suggesting, in the manner of a good social constructionist, that, because reality is owed to language, hate speech can be compared to a physical assault. He relentlessly pressed the claims of group solidarity and racial essentialism, insisting that African Americans who failed to embrace his narrative, such as the hapless prosecutor Christopher Darden, were not only wrong, but were not really black. And he ended his closing argument with an explicit call for race-based jury nullification, calling on African American jurors to ignore the evidence and "send the message" to the racist police that letting a murderer go free was an appropriate payback for a legacy of state-sponsored oppression.

The Simpson case is something of an embarrassment for critical race theorists. (Paul Butler has criticized Cochran for his explicit invitation to the jurors to ignore the evidence in a murder trial.) Yet it is also something of a vindication for them. The Simpson case confirmed one of the central descriptive claims of critical race theory: that perceptions are racially contingent, and that a jarring gap in perceptions between whites and blacks can no longer be denied. The crits deserve some kind of credit for their early recognition of the reality of racial perspectivism in America. "If radical differences [in perspective] did exist," Daniel Farber and Suzanna Sherry wrote in their criticism of the storytelling movement in 1993, "we would expect that empirical studies or at least everyday observations would consistently reveal some differences, even if the results were not all of the magnitude predicted by the theory." In the post-O.J. world, however, such skepticism about the wages of racialism reads like the antiquarian scruples of a distant era, like William Jennings Bryan demanding biblical evidence for the theory of evolution.

Similarly, in July 1994, when Jeffrey Toobin of *The New Yorker*, acting on a tip from Robert Shapiro, reported that the defense was going to play the race card and spin a fantastic story pitting a "racist cop" against a black victim, many of his readers responded with incredulity and scorn. It seemed inconceivable that African Americans would perceive and evaluate the evidence of Simpson's guilt so differently than whites. And it seemed inconceivable that lawyers, black or white, would attempt to win an acquittal by denying the possibility of objectivity and further fraying the already frayed comity of American society. Scarcely a year later, however, America has lost its epistemological innocence. Everybody knows now about the agonizing fracture in our civic life, and for this enlightenment we have Shapiro and Cochran to thank.

Toobin's book is a joy to read, even if its tale brings no joy. It is one of the most elegantly gripping trial narratives of our time. In the company of Simpson commentators, Toobin is the only one whose fair-mindedness can be trusted. Cochran and Darden have produced apologias; Lawrence Schiller, a researcher and literary mercenary from Los Angeles, ghostwrote O.J.'s entirely fictional exercise in storytelling, *I Want To Tell You* and, after gaining access to the defense team, promptly betrayed it by reporting that all of O.J.'s lawyers, with the arguable exception of Cochran, were convinced of his flamboyant guilt.

What makes Toobin's book at once humanly entertaining and morally serious is its combination of a meticulous narrative of the trial with an exuberant contempt for nearly all its protagonists. Toobin's judgments are wickedly reliable, from Shapiro ("from the moment Simpson vanished, Robert Shapiro focused on his top priority: Robert Shapiro") to Judge Ito ("Ito suffered, in the end from an undue eagerness to please, an unwillingness to offend—and a fatal lack of gravitas," manifested in his courtroom fawning over Larry King) to Simpson himself ("He was an uneducated, semiliterate ex-athlete who could barely understand much about the legal proceedings against him ... banality, self-pity, and narcissism ... are the touchstones of his character").

As the Woodstein of the race card strategy, Toobin is especially attentive to its underpinnings, and he provides lots of useful details about the stark differences in perspective between blacks and whites. During Simpson's suicide flight along the Santa Ana Freeway—we learn from Schiller that he had searched for a suitably theatrical place to commit the happy dispatch before jumping in the Bronco—he was greeted by cheering black crowds and largely impassive white crowds. At the edge of Watts, black spectators shouted "Go, O.J.!" and "Save the Juice"; but as O.J. approached the Sunset exit to his house in Bel Air,

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the few curiosity-seeking white spectators looked on silently.

But the really stark empirical evidence of a racial divide emerged with the arrival of the focus groups. Johnnie Cochran turned to Jo-Ellan Dimitrius, the Dick Morris of the jury consulting industry, who helped to choose the black jury that slapped the wrists of the black assailants of Reginald Denny, and who also picked the white jury that acquitted the four white police officers accused of beating Rodney King. According to Schiller, only three of the 200 African Americans that Dimitrius's team polled assumed that Simpson was guilty. Thirty-seven percent thought that he was innocent, and 66 percent thought that he hadn't had enough time to commit the murders. Forty-four percent said that L.A. cops had treated them unfairly at least once; and 29 percent believed that blacks were rarely treated well in the local legal system.

The prosecution, for its part, got similar advice from a firm called DecisionQuest, which offered its findings to Marcia Clark. (With the puritanical integrity that helped to sink her case, Clark refused to heed the free advice.) On a focus group panel of five men and five women, with six whites and four blacks, the racial divisions were stark: all the whites voted for conviction and all the blacks for acquittal. Toobin reports that, as an experiment, the firm asked the black members of the panel to assume that it was 100 percent certain that the blood to the left of the shoe prints at the murder scene was O.J. Simpson's and that the glove was definitely identified as Simpson's. Although this was practically a directed verdict of guilty, three of the four blacks still said that they would vote to acquit. (After the trial, polls of the general public revealed that up to 80 percent of African Americans thought that Simpson was innocent.)

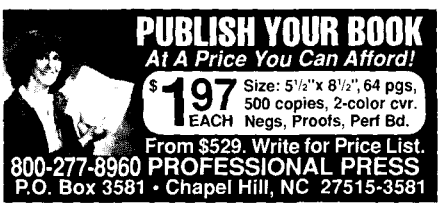
Although the focus groups and the polls revealed a harsh divide between blacks and whites, they also, when examined more closely, called into question the vulgar essentialism of some of the critical race theorists, who suggest at times that all blacks, and all women, share common perspectives forged by the common experience of discrimination. Or, more precisely, the essentialism of race was shown to be diversified by gender and class. (Kimberlé Crenshaw, one of the most nuanced and impressive of the critical race theorists, has written about how race and gender solidarity breaks down on the issue of domestic violence against black women.) Telephone surveys revealed that black men were three times more likely than black women to believe that Simpson was guilty. Belief in Simpson's guilt among African American men and women increased dramatically with education. Moreover, the prejudices of less-educated black women, as revealed in Dimitrius's focus group, startled even Cochran and his team. Cochran had assumed that black women would resent Simpson for marrying Nicole Brown. Instead, according to Schiller, the focus groups revealed that

> black women hated *her*. They resented Nicole's lifestyle. The big house, the servants, the travel, the jewelry—all from a black man's money.... They didn't criticize Simpson for living an upscale white lifestyle, leaving his community behind. That wasn't important. He'd left them long ago. The gut issue was Nicole. This white woman had lived *their* fantasy. She had things they should have. The team was stunned. The women came close to calling Nicole a whore. They came right to the edge of suggesting she got what she deserved.... Virtually every middle-aged African-American woman in the focus group supported Simpson and resented the murder victim.

So the critical race theorists are wrong in an important respect: class envy, rather than shared experiences of racial and gender oppression, turned out to be the most important predictor of juror sympathies. But gender solidarity broke down in another important respect as well. Marcia Clark had assumed that black female jurors would be sympathetic to the prosecution because they would sympathize with her narrative of domestic violence. This prediction turned out to be wrong. Far from sympathizing with Clark, the DecisionQuest focus group revealed, black women viewed her as a "castrating bitch" who was trying to demean a symbol of black masculinity.

Black women believed overwhelmingly, the focus group revealed, that even if Simpson had beat his wife, he wasn't necessarily more likely to kill her. Forty percent of black women felt that, in a marriage, physical force was "appropriate." The women in the focus group, in fact, took a position similar to the one advocated by Shahrazad Ali in her self-published classic from 1989, *The Blackman's Guide to Understanding the Blackwoman*, which urges black men to "slap" black women "across the mouth" when they are "disrespectful," in order to reestablish the patriarchal authority that racism has disrupted. The focus group showed little interest, however, in the kind of global storytelling about domestic violence advocated by Richard Delgado. (Rodrigo laments that "when the plaintiff starts to tell her story," and to explain that her husband beat her for ten years, "we interrupt and say, 'Don't tell us that story, tell us about imminent threats of death or violent injury. What was your husband about to do to you when you killed him?' If it turns out the women has nothing to tell of this kind of story, we tell her to keep quiet.")

Simpson himself, of course, is an unlikely protagonist for a narrative based on the premise that African Americans share a common legacy of harassment by the police. As Toobin puts it, "In a trial that resounded with talk of conspiracies within the LAPD ... the *only* conspiracy [was] the one to help O.J. Simpson escape prosecution from beating his wife in 1989." After Nicole's brutal beating, the starstruck officers on duty let Simpson flee into the night, in a dramatic foreshadowing of his more famous flight five years later. When Nicole tried to file a formal complaint, the detective on the scene pleaded with her to drop the charges, to protect O.J.'s image. The police had visited Simpson's house eight times before 1989 to stop him from beating Nicole; but after Nicole signed a police report not a single officer would admit to having gone to Rockingham: about forty officers had visited Simpson's home as guests, and they were intensely protective of the celebrity.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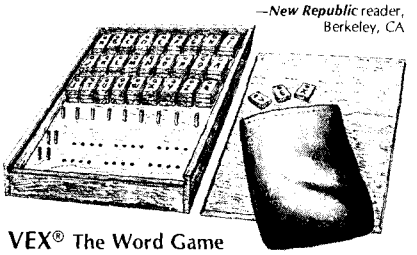
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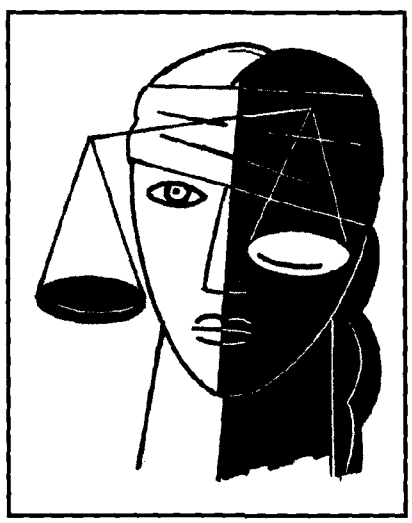
Finally, prosecutors decided to bring a case against Simpson, after his history of abuse was confirmed by an officer named Mark Fuhrman. But O.J. was let off with a slap on the wrist and allowed to atone by organizing a celebrity fund-raiser for his favorite charity. It is no surprise that, when Simpson began stalking Nicole in the week before her death, Nicole called a battered woman's shelter, rather than the LAPD, to plead for protection.

In addition to being pampered (rather than oppressed) by the police, Simpson hardly identified himself by his race. Quite the contrary. He crisply summarized his views on the question of racial essentialism in an interview with *The New York Times* in 1968, as the country smoldered with racial resentments and other African American celebrities marched in the streets for racial justice. "I'm not black," he said. "I'm O.J." Fenced off in his million-dollar Rockingham fortress, O.J. married and dated white women and hung out almost exclusively with white men. With one exception, all of the fifteen friends named in his suicide note were wealthy, middle-aged and white. "Only blacks who are bound by shared economic, social, and political constraints, who pursue their freedom through affective engagement with each other, live in real black communities," writes Regina Austin in "'The Black Community,' Its Lawbreakers, and a Politics of Identification." By the standards of some critical race theorists, then, Simpson not only had withdrawn from the black community; he was not, in fact, authentically black. He was, you might say, the Clarence Thomas of Brentwood.

Before the trial, Simpson himself couldn't fathom why race should be relevant to his defense. For months after his arrest, according to Schiller, Simpson had told his friend Robert Kardashian that color should be irrelevant in jury selection. "I don't see race," he maintained. "Race is not an issue." Under Cochran's tutelage, however, Simpson was, as they say, sensitized about race; and he was as surprised as the rest of the country to learn how differently whites and blacks reacted to him. In the nick of time, Simpson metamorphosed into a walking advertisement for social constructionism. Quickly he changed his tune. "I need black jurors," he told Kardashian after the voir dire. "I came into this color-blind. I thought everybody was the same. I realize I need them. It's sad."

Sad, and also unconstitutional. According to the Supreme Court, prosecutors and defense attorneys are prohibited from striking prospective jurors on the basis of race or gender. With the help of Dimitrius's computer print-outs, however, Cochran flagrantly ignored the letter and the spirit of the Supreme Court decisions and set out to empanel a jury with as many African American women as possible. Disregarding the cautions of his colleagues, who thought to stop while they were ahead, Cochran continued to use his peremptory strikes until he had managed to select a jury with eight African American women, the most pro-Simpson jurors of all. ("You guys wanted me to give up when we had six," he crowed to his colleagues. "You guys were scared.") Cochran reports that when the prosecution "made a half-hearted attempt to claim we were excusing Caucasian panelists without cause, we were able to use our detailed questionnaires to demonstrate that the excused candidate had revealed actual bias, as was the case of one man who



said he believed DNA testing 'always was 100 percent accurate.'" But Cochran himself was far from halfhearted about accusing the prosecutors of violating the constitutional guarantees that he himself flouted with impunity: every time the hapless prosecutors struck a black juror (and Marcia Clark failed to use all her peremptory challenges because she was trying so hard to be color-blind), Cochran thunderously objected to the complicit cameras.

As a result of this blatant exercise in jurymandering, the jury that decided Simpson's fate looked nothing like America—or like Los Angeles County, which is only 11 percent black. It included one black man, one Hispanic man, two white women and eight African American women. Only two of the jurors were college graduates. Walking back to his holding cell after jury selection, Simpson was appropriately excited. "If this jury convicts me," he joked to his lawyers, "maybe I did do it." And armed with a jury of African American women disposed to resent Nicole, and a narcissistic defendant more disposed to identify with white policemen than with the black underclass, Cochran set out to construct a defense based on the same device that he had been using in courtrooms for the past decade: racial storytelling.

In his memoir, Cochran unwittingly embraces the critical race theorists' term. "The jurors, then, must trust the lawyer as a 'storyteller,'" he declares. Toobin, too, calls the defense strategy "an effort at public storytelling, the creation of a counternarrative based on the idea of a police conspiracy to frame Simpson." To some extent, of course, all trial lawyers are storytellers, battling the disaggregating force of the rules of evidence to construct a narrative that will appeal to the jury in dramatic terms. In the Simpson case, however, Simpson's lawyers could not tell Simpson's own story. The reason was simple: Simpson had no coherent account of his activities on the night of June 12.

To his lawyers' dismay, Simpson was never able to come up with a consistent account of how, precisely, he cut his finger. Simpson had told Cochran that he cut himself in Los Angeles, but then he told Detective Vannatter that he cut himself in Chicago. When Barry Scheck and Cochran wondered how to reconcile the conflicting stories, Simpson offered to produce an airline reservations operator in Chicago who had purportedly heard him break a glass on the phone. But this story didn't convince his lawyers. How could Simpson break a glass in the hotel bathroom while talking on the phone in the hotel bedroom? And if the phone was in the bedroom, how could the reservations agent hear a glass breaking in the bathroom? "I'm starting not to believe him," Cochran confessed angrily when confronted with these absurdly conflicting tales. Like a good storyteller, though, Cochran refused to let facts gets in the way of his own fictions. "It doesn't matter," Cochran told his colleagues when Geraldo Rivera called him a liar for defending Simpson's shifting versions of events. "We shouldn't commit ourselves to one explanation to the exclusion of the other." The dream team of post-modernism.

Larry Schiller, playing courtier and business manager at the same time, came up with a brazen fund-raising idea: a book of Simpson's responses to the thousands of letters he had received in jail, evocatively titled *I Want To Tell You.* But Simpson, of course, couldn't tell his own story, because he had no coherent story to tell and also because he was, as Toobin notes, virtually illiterate. (Toobin

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quotes Simpson's unedited suicide note, later cleaned up by his friend Kardashian: "First everyone understand nothing to do with Nicole's murder. I loved her, allways have and always will. If we had a promblem it's because I loved her so much. Recitly we came to the understanding that for now we were'nt right for each other at least for now . . . ") So Schiller took it upon himself to invent a ghost-written story in Simpson's name. According to Toobin, Schiller wandered around the press room chuckling at Simpson's obvious guilt and also at the notion that Simpson had written or thought the words that Schiller attributed to him. The most quoted passage in the book, subsequently repeated by Simpson on talk shows across the land, appeared on the last page: "I know in my heart that the answer to the death of Nicole lies somewhere in the world that Faye Resnick inhabited." As Schiller told Toobin, "I put that in at the last minute."

For the jury that really mattered, however, Simpson designated not Schiller but Shapiro and Cochran to tell his story; and the story that Cochran told had nothing to do with Simpson and everything to do with race. Cochran had been honing his metanarrative about racism and the LAPD for the past decade. In constructing the attack on the institutional racism of the LAPD that made him rich during the 1980s (Schiller estimates that Cochran earned $45 million in civil damages during the past ten years) Cochran was initially on the side of the angels. The LAPD was indeed guilty of appalling acts of racism and brutality throughout the decade, and Cochran played an important role in exposing police excess.

Still, if challenging police brutality was to be an authentic civil rights struggle, Cochran had to reinvent himself as the Thurgood Marshall of his age. In a passage not designed to convey irony, Cochran recounts his own feelings of guilt when he realized that, instead of participating in Martin Luther King's March on Washington, he had "traded his birthright" by working as a prosecutor in the Los Angeles city attorney's office:

> Sleepless, I tossed and turned through anxious nights. Gradually, I began to listen to the voices that always have been there for me. I remembered the Gospel admonition I first heard echoing off the clapboards of the Little Union Baptist Church: "A man cannot serve two masters." I thought of my mother on the night I first told her I wanted to be a lawyer: "John, just promise me this. Be the best you can be." I pictured the fearless Thurgood Marshall on the steps of the U.S. Supreme Court, his great work of righteousness like an invisible crown upon his brow. I realized Du Bois's description of how Frederick Douglass had resolved his own inner struggle because he "bravely stood for the ideals of his early manhood—ultimate assimilation *through* self-assertion, and on no other terms."
>
> I knew what I had to do.
>
> At the dinner table that night, I told Barbara of my decision to leave the city attorney's office and enter private practice.

As if taking his cues from *The Coming Race War?*, Johnnie L. Cochran, private practitioner, came to reject the notion that there had to be intentional acts of racial discrimination to create victims of racism. Instead Cochran insisted on turning every trial into an opportunity to tell the story of (to use Delgado's words) "the broad story of dashed hopes and centuries-long mistreatment that afflicts an entire people. . . . " This meant that, even before the Simpson case, Cochran was beginning to use his emotionally compelling narrative on behalf of clients whose claim to the services of Thurgood Marshall was open to question.

IV.

Cochran's most objectionable pre-Simpson performance in this regard occurred in the wake of the Los Angeles riots in 1992, when he represented Reginald Denny, the white truck driver who had been beaten by a black mob and rescued by the LAPD. Rather than seeking damages from the black assailants who were, after all, poor, Cochran, retained by Denny for the civil suit, sued the LAPD on the theory that it had engaged in racial discrimination by devoting inadequate resources to the black neighborhood where Denny was beaten. Again, Delgado: "Sometimes the law requires you to tell the other person's story—the perpetrators'—not your own."

Even for a lawyer dead to irony, turning O.J. Simpson into a heroic epigone of Homer Plessy and Medgar Evers posed a special challenge. "To put it bluntly," Cochran confesses, "nobody thought of him as black." Cochran proved equal to the task. When accused by Shapiro of playing the race card during the Simpson trial, Cochran announced that "race plays a part in everything in America" and those who deny it are "totally insensitive to the problems of race in America and the underclass." (Simpson's membership in the underclass required no corroboration.) And after the last week of testimony, Cochran addressed the legislative conference of the Congressional Black Caucus, calling the Simpson trial the latest in a long line of civil rights struggles for African Americans, struggles that included *Plessy* v. *Ferguson*, *Brown* v. *Board of Education* and "yes, even the Simpson case."

As an applied critical race theorist, Cochran insisted from the beginning that the facts of the Simpson case were less important to the defense than the social meaning that might be attached to the protagonists. As Cochran puts it, "Our theory was based not only on the facts before us but also on what our experience suggested to us about their meaning." So how, precisely, did Cochran construct a story that transformed a wealthy shill for white corporations into an oppressed tribune of the underclass? Among other things, by interior decoration. Perhaps the most shameful of Cochran's many shameful exercises in racial storytelling was his redecoration of Simpson's home, in preparation for the look-see visit of the black jurors. All day on Saturday, according to Schiller, members of the defense team were hard at work "establishing O.J.'s African American identity." The lawyers found Simpson's walls lined with pictures of white people: girlfriends, celebrities, corporate sponsors. "The faces were overwhelmingly white," Schiller notes. "That's not the way to please a jury dominated by African American women." On Cochran's orders, "The white women on the walls have to go, and the black people have to come in." Down went a nude portrait of Paula Barbieri that had been hanging near the fireplace, and up went pictures of Simpson's family—"his black family," in Cochran's words. Kardashian had the photographs enlarged at Kinko's, and nicely framed. "The jurors won't notice that they are color photocopies," Schiller notes cheerfully.

But homey xeroxed pictures of Simpson and his mother weren't enough for Cochran. As Schiller reports: "Cochran wants something depicting African-American history. 'What about that framed poster from my office of the little girl trying to get to school?' he asks. Johnnie means Norman Rockwell's famous 1963 painting, *The Problem We All Live With*, in which a black grade school girl walks to school surrounded by federal marshals." And so Cochran's framed picture was hung at the top of the stairs, where the jury couldn't miss it as they trooped up to Simpson's bedroom. "Everyone," Schiller reports, "is pleased."

Well, not everyone. After the verdict, as the full horror of what they had wrought filtered back to the defense team, each of the principal lawyers, in his inimitable way, frantically tried to distance himself from his own responsibility for playing the race card. Shapiro, who had told Toobin that Mark

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Fuhrman was a "racist cop" who may have planted evidence, hysterically faxed a press release to Barbara Walters from the courthouse, minutes after the verdict came down, deploring his colleagues for playing the race card "from the bottom of the deck."

And in an exchange with Toobin in *The New York Times Book Review*, Alan Dershowitz denies his own role in dealing the race card. "It was Mr. Toobin who first suggested playing the race card," wrote Dershowitz. "It was he who called me and told me about Mr. Fuhrman's racist background." Toobin disputes this: it was Dershowitz, he writes, who first told him that Fuhrman "sounds like Oliver North, looks like Oliver North, and lies like Oliver North." This set Toobin down the trail that led to Toobin's discovery of Fuhrman's attempt to obtain a disability pension on the grounds that he, Fuhrman, was a hopeless racist. Although Toobin deserves credit for his remarkable scoop, his industry provoked others to supply corroborating details that helped the defense flesh out its narrative. "One of the consequences of Toobin's article was that important witnesses with firsthand knowledge of Fuhrman's racist inclinations came forward," writes Cochran smugly. "All in all, it was a fairly successful exercise."

In any event, the question of Dershowitz's culpability for dealing the race card is academic in light of his shamelessness in trying to evade responsibility for the narrative structure in which the card was played. At the Yale conference on "Narrative and Rhetoric in the Law," held serendipitously in the middle of the Simpson trial, Dershowitz had the gall to denounce the rise of storytelling as a legal movement. "[L]et fact finders, especially jurors, be warned that life is not a Chekhovian narrative," Dershowitz intoned. "When we import the narrative form of storytelling into our legal system, we confuse fiction with fact and endanger the truth-finding function of the adjudicative process."

To illustrate his point, Dershowitz attacked the Simpson prosecution for its "misuse of narrative" in trying to persuade the jury "that the cannons of drama required it to conclude that O.J. Simpson's alleged history of spousal abuse inevitably led him to murder his wife." The defense, Dershowitz thundered, would provide facts rather than tell stories, and the fact was that in "real life," as opposed to "fictional drama," fewer than one in 1,000 wife-beaters go on to murder their wives. At the conference, which I attended, Dershowitz's balloon was punctured by Elaine Scarry, a professor of English at Harvard, who asked him point-blank what percentage of women beaten by their husbands, and subsequently murdered, are killed by people other than their husbands. Unable to provide the figure, Dershowitz stammered that, of course, "most clients are, uh, most defendants, are guilty."

In the course of the trial, moreover, Dershowitz gave the lie to his own criticism of storytelling. The crux of the Simpson defense, constructed with Dershowitz's expensive assistance, consisted of the claim, put in the form of a story, that officers in the Los Angeles Police Department are racist and, absent evidence to the contrary, should be presumed to act in accordance with their racist presumptions. Sometimes the story was told a little less dramatically: given evidence in the Simpson case that Fuhrman lied about his own racism, the defense suggested, it was reasonable to presume that he also lied when he denied planting evidence. Both stories, of course, are vulnerable to precisely the criticism that Dershowitz offered against the narrative of wife-beating: if it is not reasonable to presume that people who beat their wives will go on to kill their wives, surely it is not reasonable to presume that police officers who lie about their hatred for African Americans will go on to plant evidence against African Americans. Life, as the un-Chekhovian Dershowitz reminds us, is not a story.

The unspoken premise at the heart of the Simpson defense, which might have come directly from a critical race theory seminar, was that black jurors and white jurors, owing to their socially constructed perspectives, are likely to view the reasonableness of these presumptions differently. The trial confirmed that this premise was, in fact, descriptively correct: white jurors, in other words, are more likely to presume that, absent other evidence, police officers do not fabricate evidence against black defendants, while black jurors are more likely to presume the opposite. (The question of which presumption is objectively more reasonable is an empirical question that should *not* be conceded to the social constructivists.) But Cochran, who could give Dershowitz a lesson in chutzpah, doesn't even have the courage of his own fictions. In his book, he backs away from the claim that he pressed in the courtroom: that an elaborate conspiracy of racist police officers had framed Simpson and then engineered a massive cover-up. "[W]e *never* believed or argued that some shadowy cabal of Los Angeles police offices [sic] set out to frame O.J. Simpson for murder because he is a black man," Cochran backpedals. "'Absurd' would be too charitable a description for such a contention."

Absurd or not, this was precisely the contention that Cochran made in his closing arguments. As Toobin reminds us, Cochran and Scheck explicitly suggested that the racist police, in a determined effort to frame Simpson, had planted at least the following items: "(1) Simpson's blood on the rear gate at Bundy; (2) Goldman's blood in Simpson's Bronco; (3) Nicole's blood on the sock found in his bedroom; (4) Simpson's blood on the same sock; and (5) the infamous glove at Rockingham which had, as Clark put it in her summation: 'all of the evidence on it: Ron Goldman's fibers from his shirt; Ron Goldman's hair; Nicole's hair; the defendant's blood; Ron Goldman's blood; Nicole's blood; and the Bronco fiber.'"

Why does Cochran deny his own storytelling in his book? Perhaps because the story is, as Cochran says, "absurd." How could Fuhrman have planted fibers from the Bronco on the Rockingham glove and on the hat found at Bundy? How could he have planted Simpson's hair on Goldman's shirt? We learn from Schiller that when the defense team learned, to its horror, that DNA tests had identified Goldman and Nicole Simpson's blood on the Bronco console, and O.J.'s blood next to the wrist vent, Barry Scheck was unable to reconcile the evidence with the defense's theory that Fuhrman had intentionally wiped the bloody glove on the console. If the glove was wet when it was wiped, then Simpson's wet blood would have been transferred onto the console as well. If the glove was dry, no one's blood could have been transferred. "The glove theory," the defense team concluded, "doesn't work." In the courtroom, however, Scheck decided to ignore the problem. "The only answer is that the glove was smeared by Fuhrman," he said, contradicting the claim in Cochran's book that "there had been no concerted plan."

Perhaps the reason that Cochran now abandons his charge that the police had a "concerted plan" to frame Simpson is because the defense was never able to produce a remotely plausible explanation of how, precisely, the heinous plan could have been carried out. In this instance, their narrativity failed them. As Toobin crisply summarizes:

> Not only would [Fuhrman] have had to transport the glove with its residue of the crime scene, but he would also have had to find some of Simpson's blood (from sources unknown) to deposit upon it and then wipe the glove on the inside of Simp-

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son's locked car (by means unknown)—all the while not knowing whether Simpson had an ironclad alibi for the time of the murders.... The other police conspirators (conspicuously unnamed by the defense) would have had to be ... even more determined. Many of the police officers at the crime scene noticed the blood on the back gate at Bundy; someone would have had to wipe that off and apply Simpson's. The autopsies, where blood samples were taken from the victims, were not performed until June 14, more than a full day after the murders. Someone would have had to take some of Goldman's blood and put it in the Bronco, which was then in police custody. And someone (the same person? another?) would have had to take some of Nicole's blood and dab it on the sock, which was then in a police evidence lab. (When Vannatter took his notorious trip to Brentwood with the blood vial, he had only Simpson's sample, not Nicole's with him.) All of these illegal actions by the police would have had to take place at a time when everyone involved in the case was under the most relentless media scrutiny in American legal history—and all for the benefit of an unknown killer who, like only 9 percent of the population, happened to share Simpson's shoe size, twelve.

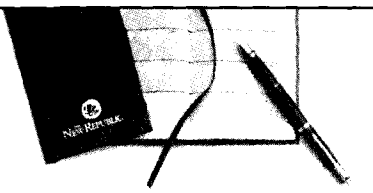
It is hardly surprising that in his book Cochran backs away from the only empirically verifiable claims that he raised in the courtroom. For, in a larger sense, the defense's narrative was a constantly shifting story. Schiller tells us that the defense made it up as the trial progressed. The only consistent feature of their story was a deep cynicism about the relevance of facts. In his book Cochran boasts that, in order to win the jurors' trust as a reliable "storyteller," he considers trust a narrative "thread" that must be cultivated through the entire trial: "It begins in voir dire, when I use eye contact to establish an implicit bond of faith with the jurors: it continues into the opening statement, when I promise them certain things; it extends through the presentation of evidence, when I try and deliver what I've promised; then it ends in the final argument, when I remind them of their promises and the promises I've kept and explain those things on which I have been unable to deliver."

Cochran is obviously unaware of the mercenary tone of this boast about method. And, judged by his own standards, Cochran insouciantly betrayed the jurors' trust. He was "unable to deliver" on virtually any of the promises of his opening statement. Cochran never called the dog walker Tom Lange, who would testify (Cochran promised) that he had seen Nicole embracing a stranger the night of her murder. He never called Rosa Lopez, whose name he mentioned more than a dozen times and whom he promised would testify that Simpson's Bronco was parked at Rockingham at the time of the murders. The blood under Nicole's fingers, which Cochran had initially suggested was inconsistent with her own blood, or Goldman's, or Simpson's, turned out to be her own. Cochran suggested that Simpson suffered from arthritis so severe that, on the day of the murder, "he could not shuffle the cards when he played gin rummy at the country club," but it turned out that Simpson did not shuffle the cards for an entirely different reason. His friend Alan Austin would not let him shuffle: he knew that Simpson cheated when he dealt.

V.

But all these criticisms are very old-fashioned. They fail to grasp the philosophical élan of the Simpson defense. To focus on the factual inconsistencies in Cochran's counternarrative entirely misses the point. The point is that this trial took place in a world that had transcended facts. The insidious genius of the defense strategy was to act on some of the central premises of critical race theory: that racism is institutional and endemic; that there is no need to prove individual acts of intentional discrimination to establish that an African American defendant has been victimized by racism; that race is socially constructed and factual conclusions are racially contingent; that any African American who holds incorrect views is not really black; that hate speech is spirit murder: that a racial epithet is, in Patricia Williams's words, "as psychically obliterating as robbery or assault; indeed they are often the same"; that the appropriate remedy for institutionalized racism is legal instrumentalism or nullification; that, to punish the racist constables, guilty black defendants must go free.

Let us take up each of these premises in turn. The old civil rights paradigm held that a plaintiff is not entitled to a legal remedy for racial discrimination unless he can prove that he has suffered from an intentionally racist act. The first premise of what we might now call Cochranism is that all African Americans are victims of racism, whether or not they have suffered from racist acts, whether or not anyone can point to individual racist oppressors. This was the subtext of Cochran's closing statement, which began by quoting Martin Luther King: "Injustice anywhere is a threat to justice everywhere." But King was propounding an integrationist ideal in his *Letter from Birmingham City Jail*. ("We are caught in an inescapable network of mutuality, tied in a single garment of destiny.") Cochran had something very



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different in mind. As Darden incisively decodes Cochran's message: "I could see where he was going. This is about injustice *elsewhere,* he was telling the jury, about Rodney King, and Thirty-ninth and Dalton, and racist white cops. That injustice allowed them to ignore the facts and concentrate their anger on what has been done to African Americans."

If Cochran's closing statement was directed primarily toward the blacks on the jury, it was also, as Darden recognizes, "directed toward me." The second premise of Cochran's strategy was to force the jury to choose, as Darden puts it, "between the Man and the Juice." And to achieve his goal Cochran had to make clear that Darden himself was "on the wrong side." It is possible to dismiss Darden, of course, as a poignant figure out of his depth. He had come from a more disadvantaged background than any other lawyer in the Simpson case, and he had the best intentions, but he was not, as Toobin writes, "an especially talented trial lawyer." And his consuming envy of Cochran, palpable on almost every page of his sad memoir, led him to make the most serious strategic error of the trial: goaded by F. Lee Bailey (at Cochran's suggestion), Darden ignored Marcia Clark's explicit instructions and had Simpson try on the bloody glove in open court. As Clark had predicted, the latex liner made the skin-tight glove fit even more snugly, and the resulting fiasco ("Darden has helped the defense more than Shapiro," Cochran quips in his book) may have sunk the prosecution.

Still, it is hard not to feel both sympathy and respect for Darden, who continued to hold fast to his color-blind ideals even as Cochran systematically set out to banish him from the African American community. "Stay out of the racial stuff, and we'll see what we can do about getting you back in," Cochran told Darden in a high-handed threat that brings to mind Leon Higginbotham's open letters to Clarence Thomas. Darden, to his credit, refused to be cowed. When Cochran whispered in his ear that he shouldn't cross-examine Fuhrman—"This shouldn't be your issue," he hissed. "Let these white people get up and argue about Fuhrman. OK?"—Darden rebuffed him with dignity. "I wasn't going to be limited by my race and I told him so."

The contest between the race-neutral Darden and the race-partisan Cochran turned out to be no contest. And the battle was played out over the critical race theory notion that hate speech is a form of "spirit murder," almost as reprehensible as murder itself. The perverse ingenuity of Cochran's victory consisted in his ability to maneuver Darden into taking Richard Delgado's position in the hate speech debate, while Cochran was able to pose as an earnest child of John Stuart Mill. When Cochran sought to introduce Mark Fuhrman's past use of the word "nigger," Darden objected in terms that could have come directly from the pages of *The Coming Race War?*: "Your Honor, when you use that word, you are using fighting words.... It is a call to arms...." Darden then read Judge Ito a quotation from Andrew Hacker, who wrote that memorable forward to Delgado's book: "When a white person voices [the N-word], it becomes a knife with a whetted edge. No black person can hear it with equanimity or ignore it as simply a word. This word has the force to pierce, to wound, to penetrate as no other has...."

Cochran's response was as disingenuous as it was effective: "It is demeaning to our jurors to say that African Americans who have lived under oppression for two hundred plus years in this country cannot work within the mainstream, cannot hear these offensive words," he proclaimed. "I am ashamed that Mr. Darden would allow himself to become an apologist for this man, to justify the fact that he is a police officer." Cochran's subtle but unmistakable accusation of Tomism had its effect. When Darden returned to his office, the phone began to ring. "'Uncle Tom.' And again. 'You are a disgrace to your race.' Again. 'Don't ever refer to yourself as black, 'cause you ain't.'" The strategy was working.

By the end of the trial, both men showed their stripes. Darden regained his bearing and eloquently defended the principles of Mill. "How many times must Fuhrman say nigger," he asks pointedly in his book, "before his transgression was the moral equivalent of two homicides?" As for Cochran, with his disgusting comparison of Fuhrman's bigotry with Hitler's "genocidal racism," he unmasked himself as a limousine illiberal, a remorseless race-peddler. Thus, Cochran includes the following apologia in his book: "I never intended to suggest that Fuhrman's perjury was morally—or in any sense—comparable to the genocidal crimes of the Third Reich.... I never suggested nor do I believe ... that Fuhrman and Hitler were the same. I have been to Yad Vashem. No one goes away from that unchanged." No one, apparently, except for Cochran. He concludes with this little homily: "In one of its most inspiring moral injunctions the Talmud tells us, 'If you save one life, it is as if you had saved the entire world.'"

What makes all this especially grotesque was Cochran's refusal, when he brandished Hitler during the trial itself, to speak the word "anti-Semitism." A close reading of Cochran's closing statement reveals the dark side of the storytelling method. Stories do not appeal to reason; they usurp it. Reasoned arguments depend on things such as truth, evidence, logic, objectivity and the rest of the anachronistic apparatus of the critical mind. Stories, by contrast, appeal to the heart. They are designed to edify, and to confirm the prejudices of a community of listeners. For this reason, stories are a primary instrument of identity. So let us recall precisely what Cochran said: "There was another man not too long ago in the world who had those same views.... This man, this scourge, became one of the worst people in the history of this world, Adolf Hitler, because people didn't care or didn't try to stop him. He had the power over his racism and his antireligion. Nobody wanted to stop him, and it ended up in World War II." Antireligion, not anti-Semitism. Cochran was surrounded at this point by bodyguards supplied by the Nation of Islam, and he was so loath to ruffle the sensibilities of his jurors that he told a story about Hitler that omitted the central detail of what Hitler did. This, of course, was a rhetorical strategy employed by the fascists themselves. (I do not intend to suggest that Cochran's rhetoric was morally—or in any sense—comparable to the crimes of the Third Reich. I have been to Yad Vashem....)

The final prong of Cochran's strategy was his racialist inversion of his favorite Talmudic injunction. To save one life, Cochran told the jury, you are justified in inflaming the entire world. His closing argument was an appeal for racial solidarity and an explicit call for race-based nullification: "Your verdict in this case will go far beyond the walls of Department 103 because your verdict talks about justice in America and it talks about the police and whether they should be above the law," Cochran announced. "Maybe this is why you were selected," Cochran said to the African Americans on the jury, whom he had selected for this very purpose. "There's something in your background, in your character, that helps you understand that this is wrong. Maybe you are the right people, at the right time, at the right place to say, 'No more, we are not going to have this. This is wrong.' What they've done to our client is wrong. You cannot believe these people. You can't trust the message. You can't trust the messengers. It is frightening." Cochran subtly—and

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illegally—reminded the jury of its power to nullify ("You are empowered to say, 'We are not going to take that anymore.' I'm sure you will do the right thing about that"), and he challenged the jurors to "Stop this cover-up:"

> Who, then, polices the police? *You* police the police. You police them by your verdict. You are the ones to send the message.... If you don't speak out, if you don't stand up, if you don't do what's right, this kind of conduct will continue on forever. And we'll never have an ideal society.

Johnnie L. Cochran, idealist.

VI.

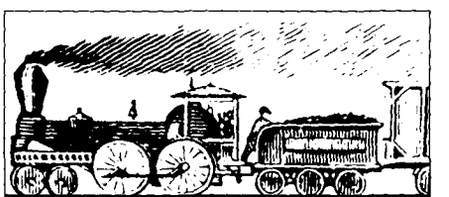
Why should the acquittal of O.J. Simpson be seen as a social crisis rather than the traditional windfall that guilty defendants routinely reap from the exclusionary rule, which says that the criminal must go free when the constable blunders? In most cases, of course, the remedy for an unconstitutional search is the exclusion of evidence rather than the dismissal of an indictment; but, in light of the virulence of the evidence of Fuhrman's racism, couldn't the jurors have entertained reasonable doubts about whether he was capable of acting out fantasies? And wasn't Cochran simply playing a conventional lawyer's role, poking holes in the prosecution's narrative to help a guilty man go free? To put it differently: wasn't he the student of Dershowitz and not the student of Higginbotham? Isn't it unfair, moreover, to hold Cochran to standards of narrative coherence? Defense attorneys are not usually required to tell stories that are airtight and logically consistent. Why should it matter if the LAPD could not logically have done what they would have had to have done to support Cochran's charge that Simpson was framed? And given Fuhrman's bigotry, wouldn't it have been professional malpractice *not* to interject race into the trial?

All these are questions that Cochran invites us to ask when he presents himself in his memoir not as a legal performance artist indifferent or hostile to the law but as an entirely traditional defense advocate, "an advocate for the law as much as an advocate for the individual." But he cannot be excused so easily. In his closing statement, after all, Cochran explicitly invites us to construe the meaning of an acquittal as something more than a windfall for his client. He calls on the jury to articulate a message that will provoke social reform. So it does Cochran no injustice to evaluate the social significance of the verdict on his own terms and to conclude that its significance was, in a word, toxic.

Christopher Darden, for his part, had no doubt that the jury's verdict should be construed as an intentional act of race-based nullification, an example of racial instrumentalism in the starkest sense: "I was ashamed of a jury that needed just four hours to dismiss the lives of two people and a year's work, a jury that picked a dreadful time to seek an empty retribution for Rodney King and a meaningless payback for a system of bigotry, segregation and slavery." The jurors' conduct before, during and after their brief deliberations also undermines the claim that the verdict should be understood as an expression of reasonable doubt, rather than as an act of nullification. When it was time to discuss the facts of the case, Anise Aschenbach, one of the two white jurors—Toobin and Schiller report that Cochran's team, using a Nation of Islam epithet, repeatedly called her "the white demon"—announced that she wanted to say something. "I was so outraged at what [Cochran] said," Aschenbach told her fellow jurors, according to Toobin. "He wants us to send the LAPD a message. Does he think we're so stupid that we're going to send a message rather than decide based on what we heard in the case? I hope I was not the only one offended by his remarks." But her fellow jurors responded with silence.

The more hopeful hypothesis, that the jurors conscientiously considered the evidence of Simpson's guilt and found that they were not convinced beyond reasonable doubt, is further undermined by the briefness and the banality of their deliberations. The factual doubts that they raised were irrelevant or trivial. Why wasn't there more blood around the glove Fuhrman said he found at Rockingham? one juror asked. Another wanted to know why, if the glove came off Simpson's hand during the fight, it wasn't inside out. Three jurors mentioned that the glove didn't fit. As for the DNA tests, which the defense team had considered almost conclusive proof of Simpson's guilt, the jurors referred to them only once. Two jurors said they didn't think that the tests were reliable, since the DNA came from the back gate at Bundy. The jurors made no attempt to engage the unrefuted evidence presented to them and summarized by Toobin: that Simpson had a violent relationship with his ex-wife and that tensions were increasing between them in the weeks before the murders; that Simpson had no alibi for the time of the murders; that his Bronco wasn't parked at Rockingham during that time; that Simpson had a cut on his left hand the day after the murders; that DNA tests showed Simpson's blood to the left of the shoe prints leaving the scene; that the blood of Goldman, Nicole and O.J. was found in the Bronco, and hair consistent with Simpson's was found on the killer's cap; that the gloves that Nicole gave Simpson as a present in 1990 were almost certainly the ones used by the murderer.

Critical race theorists, of course, are more interested in the social meaning of a particular action than in the personal motives underlying it. By this standard, plenty of circumstantial evidence suggests that the decision of the Simpson jurors must be seen as a racially charged act. Darden recalls that early in the deliberations one juror heard another say: "This is payback time!" The prosecution decided that it was a bad sign when another juror was seen carrying a copy of Nathan McCall's minor classic of black rage, *Makes Me Wanna Holler*, which begins with McCall's gleeful account of his brutal beating of a white boy who strayed into his neighborhood. Jurors who were dismissed in the middle of the trial emphasized the centrality of race in the deliberations. "For the black jurors, Simpson was one of our own," one juror confessed in a tell-all book published the summer before the verdict. "He was a



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brother and he was in trouble." After the verdict was announced, Lon Cryer, juror number six, turned to Simpson and raised his fist in a black power salute. And as the jurors sat in silence in the eleventh-floor lounge, one of them, Carrie Bess, announced to no one in particular: "We've got to protect our own."

Even the most radical critical race scholars have not, to my knowledge, pressed the claim that Cochran was justified in calling for nullification. The argument would be very hard to sustain. Principled acts of nullification, such as the refusal by abolitionist juries in the antebellum period to enforce the fugitive slave laws, involved conscientious decisions not to convict guilty defendants because of a belief that the laws in question were unjust. Nobody on the defense team ever suggested there is anything unjust about the laws prohibiting intentional homicide. Instead, Cochran called on the jurors to refuse to apply a *just* law in order to punish the police and to express solidarity with the defendant.

This is racist nullification in its purest form. It is precisely the kind that was practiced by white Southern juries in the nineteenth and twentieth centuries, culminating in the acquittal of the two white men charged with murdering Emmett Till in 1955, and of Byron de la Beckwith, the murderer of Medgar Evers, in 1963. It was then appropriated by William Kunstler, who invited black jurors to acquit guilty Black Panthers as a form of racial payback. But Kunstler at least employed his rhetoric of race-based nullification on behalf of criminals who conceived of themselves as political revolutionaries. The unique contribution of Cochranism was to transform a pampered celebrity into a victim of oppression; to construct, with the aid of ghostwritten books and xeroxed photographs, a charged and lachrymose identity for the defendant that bore no relation to the one that he had selected for himself.

In the end Cochran managed to drown out the factual question of guilt or innocence with a narrative that he summarized neatly at a defense conference two weeks before the close of the trial. "I know it's our job to get Simpson off," Cochran told his colleagues, "but I think our legacy should be to show this country that the cops will do just about anything. They will lie because they believe that the end justifies the means." This is indeed the ultimate legacy of Johnnie L. Cochran, and he must be held accountable for it. It is he who believes that the end justifies the means. His storytelling transgressed the boundaries of acceptable advocacy, and shook the color-blind aspirations of American law more profoundly than any murder trial in the post-civil rights era.

Decrying the use of racist stereotypes by white prosecutors in the 1960s, Leon Higginbotham eloquently identifies the dangers of interjecting "elaborate and detailed myths about African Americans" into the "conscious and unconscious minds of courtroom participants. Once these racist attitudes and assumptions have been tapped into," Higginbotham notes, "the judge, jury and lawyers are more likely to stimulate and rely on their collective consciousness or unconsciousness, applying related racist myths and stereotypes," rather than finding facts and applying the law as dispassionately as possible. Higginbotham goes on to quote Anthony Amsterdam, a civil rights advocate from another era:

> [T]he very fact that a racist pitch is made in closing argument almost always means that the prosecutor has read the jury—on the basis of knowledge about the individual jurors or their backgrounds or the community or on the basis of a hundred signs that may be very subtle or very glaring in the atmosphere of the courtroom but are totally undetectable on the cold written record preserved for appeal—and that the prosecutor has decided that, with *this* jury in *this* case, a racist pitch will *work*. Courts that ignore this reality are willfully blind.

In the context of a criminal trial, there is no moral or legal difference between racialism and racism. Ascribing the sympathetic attributes of victimhood to a defendant because of his race is just as subversive as ascribing the pernicious attributes of villainy to a defendant because of his race. Appealing to the racial prejudices of black jurors is just as indefensible as appealing to the racial prejudices of white jurors. There was a time in American history, a long and vicious time, when these things were not obvious. Then, in the middle of this century, as a consequence of harsh and noble struggle, there was a hopeful moment when it seemed at last that these things might become obvious. Now we know that they still are not. The prestige of color-blindness is diminishing in America, and not only among people of color. This is a disaster. For we will be blind to color or we will be blind to justice. •

The Voyage In

BY ALAN TAYLOR

The Natures of John and William Bartram by Thomas P. Slaughter

(Alfred A. Knopf, 304 pp., $27.50)

Travels and Other Writings by William Bartram edited by Thomas P. Slaughter

(The Library of America, 701 pp., $37.50)

John and William Bartram, father and son, are ideal subjects for a double biography: fascinating men of eighteenth-century America whose encounters with nature address our own environmental dilemmas at the close of the twentieth century. John (1699-1777) and William (1739-1823) were Pennsylvania Quakers who achieved international renown as botanical explorers, collectors, writers and artists. They are especially appealing figures because they had the courage of convictions unusual for their time, and because their convictions anticipated some of our own.

The Bartrams detected a universal spirit and intellect in nature, uniting plants, animals and humans into a divinely ordained whole. And they insisted that humans arrogated to themselves an exaggerated sense of distinction and supremacy that belonged only to the creator. Thus the Bartrams opposed hunting for sport and the relentless killing of snakes: the special and ubiquitous passions of eighteenth-century Americans. Both men, but especially William, also expressed a rapturous delight in the wild, where nature did not yet tamely bear the colonizers' transforming imprint. And although John never forgave all Indians for the Indians who killed his own father, William be-

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came eighteenth-century America's most passionate and eloquent advocate for the humanity and the culture of the native peoples.

John Bartram lived a great American success story, akin to that of his contemporary Benjamin Franklin. Born in 1699, John became an orphan at the age of 12, when Indians killed his father. John inherited and steadily improved a substantial farm beside the Schuylkill River near Philadelphia, a prime location. Developing a profitable nursery and garden he thrived, becoming his rural township's leading taxpayer and an avid reader of books borrowed from a local gentleman or ordered from London. Focusing his reading on natural history and botany, he recognized his own special opportunity to garner prestige by traveling through colonial America to find, to identify, to collect and to domesticate New World species of plants previously unknown to science.

John Bartram was perceptive, industrious, resourceful, tireless. He was, Thomas Slaughter explains, "personally responsible for one quarter of all the plants identified and sent to Europe during the colonial period." Through his London broker, a wealthy Quaker merchant named Peter Collinson, Bartram's letters and samples reached scientifically minded English gentlemen and the Royal Society. These connections provided Bartram with gifts, a subsidy for his travels and notice in the Society's *Transactions,* all very gratifying to a colonist of modest origins dwelling on the margins of the British empire.

In 1765, with Collinson's help, Bartram triumphed by obtaining a coveted appointment as the royal botanist for North America. The position brought a title to confirm his renown and a permanent salary to finance his most ambitious and exotic journey: through the Carolinas, Georgia and the new royal colony of East Florida, in 1765-1766. On this expedition he took along his 26-year-old son, William, who was at loose ends, having recently failed as a shopkeeper in North Carolina.

A precocious youth with a special talent for nature sketches, William had long shared his father's passions for travel and the wild. Enamored by East Florida, he decided to remain and live as a slave-holding rice planter, dreaming of much leisure for further botanical exploration. But within a year his new plantation was a shambles, the slaves were mutinous and he was gripped with despair. Returning home in defeat in 1767, Bartram redeemed himself by developing his skill as a nature artist. Sketches sent to Collinson in London caught the eye of Dr. John Fothergill, a wealthy Quaker physician. He became William's patron, financing an extended botanical expedition through the Southeast to the Mississippi during 1773-1777. William returned enchanted by the landscape and impressed by the generous hospitality and rich cultures of the Cherokees, Creeks and Seminoles.

Following John Bartram's death in the fall of 1777, William Bartram gradually composed an account of his southeastern travels, which he published in 1791. Thereafter he led a quiet and private life as the curator of his father's garden and memory. Although his *Travels* provoked more criticism than acclaim in William's homeland and lifetime, it inspired the next generation of Romantic poets in England and eventually secured him a growing and admiring readership in America. Thomas Slaughter aptly characterizes the *Travels* as "the most remarkable American nature and travel book of the eighteenth century."

In the southeastern forests and savannas, William Bartram experienced a wild that we can no longer know in our mechanized and urbanized present. Our sense of environmental loss imparts an elegiac fascination to Bartram's evocative and rapturous descriptions. He encountered Creek council houses elaborately decorated with representations of human-headed animals and animal-headed people; extensive salt deposits "which all kinds of cattle lick into great caves"; towering cypress, pine and live oak forests; blazing stands of wild azalea and magnolia; and "delightful green savannas." In Florida he was especially awed by the bubbling fountains of crystalline waters set in grottoes surrounded by orange groves.

With consummate skill and vivid detail, William summons the mind's eye:

> Behold, for instance, a vast circular expanse before you, the waters of which are so extremely clear as to be absolutely diaphanous or transparent as the ether; the margin of the basin ornamented with a great variety of fruitful and floriferous trees, shrubs, and plants, the pendant golden Orange dancing on the surface of the pellucid waters, the balmy air vibrating with the melody of the merry birds, tenants of the encircling aromatic grove.

But he offers more than static set pieces of natural beauty. Bartram's close perception invests his descriptions with a motion and a drama that nourishes the imagination. He continued his depiction of the fountain:

> But behold yet something far more admirable, see whole armies [of fish] descending into an abyss, into the mouth of the bubbling fountain: they disappear! are they gone for ever? is it real? I raise my eyes with terror and astonishment; I look down again to the fountain with anxiety, when behold them as it were emerging from the blue ether of another world, apparently at a vast distance; at their first appearance, no bigger than flies or minnows; now gradually enlarging, their brilliant colours begin to paint the fluid.

Given all the sublime beauty that he did witness, it is small wonder that Bartram was prepared to believe a Creek tradition that the Okeefenokee swamp contained an elusive paradise of incomparably lovely women, "whom they call the daughters of the sun."

Readers seeking his vision of that lost world of American nature will be richly rewarded by the recent publication of *William Bartram: Travels and Other Writings.* The Library of America's elegant new edition is masterfully edited by Thomas Slaughter and beautifully illustrated with William's remarkable drawings. Slaughter's very full, precise and helpful notes reveal the judicious care and attention to detail of a talented historian. Those same qualities are also manifest in parts of *The Natures of John and William Bartram,* his biography of father and son. In particular, the superb third chapter, "Visions," thoroughly and persuasively examines John Bartram's writing to reconstitute his intellectual milieu.

The problem is that Slaughter devotes his book to a provocative and problematic project in what he calls "emotional history." He rejects the conventional notion that a scholar should cultivate an objective detachment so as to produce a

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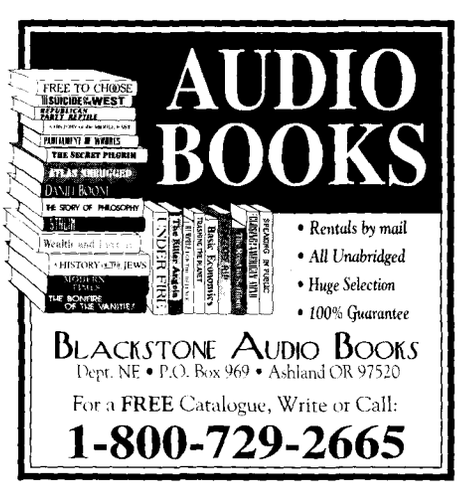

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narrative ostensibly cleansed of self. Instead, he follows (and culminates) a recent trend among some historians toward placing the authorial self within the narrative and dissolving the distinction between history and historical fiction. Slaughter reiterates the old romantic melodrama that pits the supposedly cold, lifeless and limiting rationality of science against the higher calling of emotive, imaginative art. "Unlike the poetic view, the scientific shuns reverie; it attempts to elude idiosyncratic observation and tries to suppress the self." As the champion of reverie and self, Slaughter shares with his subject William Bartram the higher calling of poetic art. Claiming an emotional courage beyond that of his peers, Slaughter insists that "no less than scientists, historians have feared emotions, both our own and those of our subjects, defining them as beyond our professional terrain."

Slaughter explains that his book "is more about interior than exterior exploration," more about his emotive bond across time with the Bartrams than about their connections with their contemporaries in eighteenth-century America. In Slaughter's treatment, therefore, the Bartrams appear strangely detached from the social and political upheavals of revolutionary America. In one intriguing sentence, Slaughter lets drop a bombshell: "William served, at least briefly, as a spy for Patriot forces in 1776 during his travels." But he offers no further discussion, although this episode would surely reveal much about William's life as well as his times.

Preoccupied with interior exploration to the neglect of the exterior world, Slaughter treats "nature" almost exclusively as a construct within the minds of John and William, rather than as the material and biological environment which had (and has) its own existence and history beyond whatever humans think, say and write about it. Since plants and animals dwarf the human figures in William's drawings of the Florida savannas, Slaughter concludes: "As always for William ... dominance and control are deeply troubling prospects, implying responsibilities that he's not prepared to accept, a confidence that he doesn't really have, and a hierarchical configuration of nature to which he isn't emotionally attached." But an external explanation is more plausible. William's drawings convey the physical reality that in 1774 on the Florida savanna the human presence was minimal amid the exuberant proliferation of wild plants and animals.

Slaughter rarely proceeds beyond the Bartrams' minds to recover a material landscape that had at least as powerful an effect on their thoughts as did their receding childhoods. In particular, he neglects William Bartram's fascination with the abundant relics and the impressive ruins of ancient Indian towns. Ubiquitous in the southeast, those extensive remnants of avenues, plazas, mounds, pyramids, terraces, council houses, orchards and artificial lakes impressed William with the power of nature to overcome human artifice. Amid the ruins Bartram recognized a nature larger than, and often at odds with, our minds. But Slaughter's focus is so relentlessly interior that it diminishes the principal fascination of William Bartram's *Travels* for today's readers: its vivid depiction of a powerful and intoxicating natural and native world now largely lost.

Instead, Slaughter emphasizes his feelings of emotional kinship and spiritual immediacy with the Bartrams and his sense of continuities between their experiences and his own. Slaughter explains that "all the things that I am and that have happened to me contribute to what this book became, what it is. In ways that I can only glimpse, this project is a chapter in my life, a connection to those long since and only recently dead, and to all those who, for me, continue to live. This includes John and William Bartram, both of whom live for me." Indeed, Slaughter regards his own reveries as his ultimate source for interpreting the Bartrams. "The use of first-person paraphrasing throughout the book suggests how closely my life, consciousness and nature are entwined with my interpretation of the Bartrams. This method ... exposes a belief that my experience provides an authority supplementing that of the sources mentioned in the Notes.... The sources listed in the Notes are filtered through my life; they have no independent standing as evidence apart from my understanding of them." The Bartrams function as symbolic material for this historian to exercise his own fervid feelings about nature, fatherhood, death and the Princeton faculty.

Since Slaughter locates his own imagination at the center of his narrative, he feels compelled to provide more self-revelation than is customary for historians. "I'm a Quaker. I'm a mix of Native-American, French-Canadian, and English heritages. I'm a father and, in common with all of my gender, I've been a son. This project crystallized in my consciousness during a year in which my father died and my son was born. Before I started writing, my maternal grandfather and my mother died, too. Halfway through a first draft, my daughter was born. Days after I completed the last chapter, before I wrote the conclusion, my good friend and dog, Willie, died, ending a companionship of thirteen years."

Exquisitely well read in the very best literature, Slaughter also shares with his readers his encounters with the poetry of Donald Hall; the novels of Cormac McCarthy, N. Scott Momaday, Wallace Stegner, Norman Maclean and Joseph Conrad; the histories of Edmund S. Morgan, John Demos, Richard Price and Simon Schama; and the biographies of Goethe, Bernard Shaw and W.E.B Du Bois. And Slaughter takes special pains to identify his inspirations and patrons cultivated "as a graduate student fifteen years ago" at Princeton. It is an impressive list of academic greats: John Murrin inspired Slaughter's first book; Lawrence Stone passed on "his own storytelling talents"; "LeRoy Ladurie was a frequent visitor to Princeton during my four years there, Carlo Ginsburg a palpable presence in the books that I read, and Natalie Davis and Clifford Geertz were visible fixtures on the local landscape."

This exuberant name-dropping apparently helps to establish one of Slaughter's emotive bonds to the Bartrams. Of himself, Slaughter reveals: "Edmund Morgan's biography of Ezra Stiles ... is my favorite among my favorite early American historian's books. Morgan once told me that it's his favorite, too. No one tells stories about the past better than Morgan and no one captures the humanity of historical figures better than he." Of John Bartram, Slaughter writes, "his letters often drop famous names and an intimate detail about their lives for no reason but to establish the connections between great men and him." Since he defines no clear boundary between his subjectivity and his subject, his readers will inevitably detect Slaughter in his characterizations of the Bartrams.

With imagination as his ultimate authority, Slaughter writes a history of the might-have-been, instead of conventionally adhering to the probabilities manifest in the partial record of surviving documents, as a more careful historian would do. Always vivid, Slaughter's prose waxes enthusiastic whenever he encounters a gap in the record that permits his fancy full rein to recreate possibilities. The words "maybe," "perhaps," "if" and "seems" proliferate throughout his book. Often these conditional reveries cancel one another, denying the reader any conclusion. Reaching far beyond the evidence, for example, Slaughter imagines that the renowned Swedish artist Gustavus Hesselius, active in Philadelphia during the 1750s, tutored the young William Bartram: "Maybe Bill watched the adult artist at work; perhaps the man gave some lessons, or at least

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pointers, to the promising boy. And, then again, perhaps not. Imagine John showing off his son's pictures to a famous artist with the boy in the room." Maybe. Maybe not. Imagine.

Reverie enables Slaughter to treat the absence of documents as a variety of evidence—or to exploit explicitly irrelevant information. No letters from William to John survive for the years 1770-1772. Slaughter imagines that William destroyed them because they were despondent and self-damning. Then Slaughter concludes that their current non-existence demonstrates that William was especially troubled in 1770-1772. Slaughter devotes five pages to describing John Bartram's evolving character from an examination of two very different painted portraits, though he concedes that both paintings probably represent other men. Of the second portrait, Slaughter concludes: "As he got older, John got simpler, too; but both men are John Bartram, even if neither of them really is."

Slaughter plays fast and loose with the evidence because he is in pursuit of "emotional truth," which he considers vastly superior to the merely empirical truth to be found in documents and artifacts. He admires William Bartram's exaggerated stories because they "orchestrate facts and fancies into an emotional symphony that is William's Truth, his art, his gift to us." It is also Slaughter's gift to us. For example, he narrates the death and the burial in 1820 of Jack Snake, a Cherokee chief, during a visit to the Bartrams' famous garden. Slaughter observes, "Whether or not it's ironic, it's certainly poetically just that [Jack] Snake died on a farm purchased with money inherited from a man his ancestors had killed." This makes for a dramatic line, but it is historically misleading. As a Cherokee, Jack Snake descended from a people who in 1711 were allied with the North Carolina colonists, helping them to defeat their mutual enemies, the Tuscaroras, who had killed grandfather Bartram. Only if we homogenize the diverse native peoples into that fictional construct, "the Indians," can Jack Snake be said to descend from the killers of William's grandfather.

Slaughter's reveries consistently describe a prolonged psychological conflict between the Bartrams: a sensitive son's lifelong struggle to cope with an impressive and overpowering father, who had been permanently scarred by his own traumatic youth. In Slaughter's telling, every twist of their fate flows relentlessly from two shocks, one experienced by each Bartram in adolescence. John's longing for control expressed a profound insecurity rooted in the pain of his father's murder. William's tormented psyche derived from father John's decision to consign him to a detested career in commerce.

Slaughter describes John Bartram as both a "daunting, craggy, immovable presence, a hard man to follow as a son" and consumed by "insecurity, fearfulness, and self-doubt." Slaughter attributes this painfully divided self to the early deaths of John's parents, especially his father, although only another reverie can recover that undocumented trauma. As a father, John meant well, but his longing for control and his conventional expectations permanently damaged William's fragile psyche. After initially encouraging, praising and supporting William's love for nature and art, John became concerned that his son learn a paying trade. John apprenticed the reluctant boy to a Philadelphia merchant in 1756. Thereafter, as Slaughter tells it, all of William's decisions and reactions flowed from his "sense of betrayal by a disloyal father." Since William never married, Slaughter concludes: "The patriarchal presence was too powerful, too intimidating in his life. He couldn't be the father, the husband, the lover, the provider that his father was." When William praises Indians, it is "to compete with his father, to be a better, more tolerant, more Christian Quaker, thereby defining himself positively in contrast to John." And when William detects typographical errors in his published book, "The rage must have returned, whether or not the depression again swept over him."

Slaughter detects psychological pain and familial conflict in almost every source, even the most placid and innocuous. As a boy, William Bartram sketched the family farm beside the Schuylkill River, drawing a small fisherman in the lower right corner. Artistic convention suffices to explain the angler, but Slaughter imagines something more provocative: "a self-portrait of the artist enjoying nature at leisure and watching from the outside, judging and rejecting his father's role for himself." When John Bartram writes, "I was pleased with Billy's temperance and patience in his journey," Slaughter speculates: "Does that mean that John was pleasantly surprised; is it a comparison to past experience or what he had witnessed that summer in his home? Did William now drink, however little being too much in his father's eyes; did he often lose patience, perhaps with his father? Or maybe he had a temper that John found intemperate, too. Maybe this tells us something about how the summer had gone—badly, both cold and hot." Maybe. Maybe not. No one knows. No one can know. But Slaughter speculates freely, and invariably detects a simmering resentment on the verge of eruption.

Slaughter occasionally concedes their similarities and their love for one another, but he dwells upon their differences and conflicts. I would reverse the emphasis. Surely the deeper truth is that John and William Bartram were remarkably affectionate and similar, committed to a shared vision of God and nature. They differed far more profoundly with almost all of their contemporary countrymen than with one another. And, by all contemporary accounts, the Bartrams successfully led lives of moderation, balance, patience and dignity. But those virtues do not resonate with Slaughter's imagination, and so he treats them as masks over a more perfervid reality.

In the *Travels*' most dramatic and notorious passages, William Bartram describes his narrow escapes in Florida from hundreds of implausibly immense alligators billowing steam and bellowing their longing to eat him. Slaughter persuasively argues that Bartram exaggerated the dimensions and the dangers of the alligators to convey the dread that they produced in his mind. In *The Natures of John and William Bartram*, the psychological conflicts between John and William resemble the overblown and impossibly numerous alligators of the *Travels*—as real but modest conflicts take on monstrous proportions in Slaughter's reveries. Rather than illuminating the Bartrams, his imaginary bond overwhelms them and transforms them into emotional caricatures.

Historians certainly need their imaginations to recover and to describe the past and its people. The problem is that Slaughter has trained his imagination so intensely and so narrowly on supposed commonalities between his own emotions and experiences and those of the Bartrams. And finally he underestimates the power of imagination by confining it to backward projections of his own feelings. The historical imagination works best, surely, when it takes us beyond the self, beyond personal and contemporary limits and into the lives of people who have been rendered alien by the passage of time. The fascination of the Bartrams, after all, is that they lived so fully in an America so different from our own.

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WASHINGTON DIARIST

Shooting Jews

IN A TORN FOLDER IN AN OLD FILE box I have a precious manuscript, dated "May, 1978." It is about a hundred pages long, and it is written with sparkling, shattering clarity. It is a memoir of a woman's idyllic early years, a girlhood of *jouissance* and Judaism, in a town called Schodnica in the Carpathian Mountains in Poland, and of the swift transformation of an idyll into a hell. Abruptly the narrative moves from wild strawberries to wild Germans and wild Ukrainians and wild Poles. A "Holocaust memoir," we would call this manuscript; but of all the instances of the genre that I have read, this one affected me the most bitterly, because of the plainness with which it recounts the tortures that the author endured (suffice it to say that she endured everything that a woman could endure and still live), and because the author was my cousin. From hell she moved to Rochester, where she raised a remarkable family. In her years in America, she was visited again and again by illness; but she was perhaps the most perdurable person I have ever known, and her trials made her into a master of mordancy. She taught me how much a laugh can banish. All in all, my cousin embarrassed the angel of death for half a century. She died last year.

A FEW WEEKS AGO I WAS STARTLED to see her in a buzzy new book of photographs by Frédéric Brenner, called *Jews/America/A Representation*. She appears with her daughter, an individual of uncommon sweetness, and with five other mothers and daughters, in a photograph called "Jewish Lesbian Daughters of Holocaust Survivors, with Their Mothers, New York City, 1994." I swear. The photographer's victims are sheathed in black, arranged as partners in a circle, melodramatically lit, and shot from above. If I could, I would reach into this inane image from the great American bacchanal of identity (Hitler! Sappho! *Naches*!) and extract my family physically from the indignity. Instead I will satisfy myself with the dream of another shoot: "Jewish Straight Sons of Holocaust Survivors Who Think That Jewish Lesbian Daughters of Holocaust Survivors Are Missing the Point," which is that they are being exploited in a cheap culture game.

MY COUSINS WERE HARDLY BRENNER'S only victims. His album of American Jews is a freak show climaxed by a cult of celebrity. Here we have, in long rectangular black-and-white pictures, a singles' weekend in the Catskills, with the willing Jewish flesh compared unfavorably to a group of mannequins; "Jews with hogs" (culturally forbidden motorcycles, not ritually forbidden meat); "Kahana Chai Summer Camp," with black bars preposterously pasted across the eyes of the not-so-nice Jewish boys in the woods, "exact location unknown"; "Perry Green, Fur Trader, With Inuit, Saint Lawrence Island, Alaska"; Navajos and Jews in Monument Valley (two tribes: get it?); ten Jewish women from the Jewish Theological Seminary decked out in the instruments of prayer that Jewish law restricts to Jewish men, a knock-off of Richard Avedon's photograph of The Factory, with the thrill delivered by phylacteries instead of phalluses; and worst of all, a picture called "Survivors, Los Angeles, California, 1994," in which six Jewish women pose half-naked at a table and display the results of their mastectomies. Oh, I almost forgot, there is a challah on the table. Women of valor, indeed: this photograph is the perfect emblem of the confusion between exhibitionism and courage that characterizes a psychologized society. The spiritual deformation displayed is greater than the physical deformation. And the physical deformation did not require the complicity of the subjects.

BRENNER'S PICTURES ADORE THEMselves. They believe themselves to be fresh, shocking, paradoxical, controversial. See how they blow the lid off American Jewish identity and go behind the conventions of American Jewish existence and boldly reveal it to be riddled with ... irony. It is a little deflating, then, to turn to the iconoclast's icons, to the conclusion of Brenner's book, called "Icons," and to find there the portraits of these pillars of American Jewry: Ruth Westheimer, Dustin Hoffman, Henry Kissinger, Ralph Lauren, Roy Lichtenstein, Michael Milken, Philip Glass, Michael Ovitz, Carl Sagan, Norman Mailer, and others. Each of the stars and the swells (there is not, say, a rabbi among them) is framed by a tony Old-Masters frame, from which he or she projects in a manner that subtly epitomizes his or her magical being. This is the sort of send-up of celebrity photography that is just another sort of celebrity photography. The joke on Brenner is that his contrivances recuperate, as he might say, the clichés of his subject. He has made the discovery that the Jews of America are American Jews. We are not altogether a people apart! His "Icons" reminds me of nothing so much as a book that sat on my shelf in my boyhood. It was called *The Jew in American Sports*.

A FEW YEARS AGO, IN A WONDERFUL book called *Marranes* that appeared in Paris, Brenner published a series of haunting and valuable pictures of the descendants of Marranos in Portugal. The photographs were distinguished by the photographer's respect for the different reality of his subjects. So how did he come to produce his volume of grotesques? The answer is that, in the case of the American Jews, he does not respect the different reality of his subjects because he does not believe that they have any reality at all. They live, you see, in America. *Jews/America/A Representation* is a sorry cross between Diane Arbus and Jean Baudrillard. "America is neither dream nor reality," Baudrillard has written. "It is a hypereality.... Americans have no sense of simulation. They are themselves simulation in its most developed state" and so on. Please understand. This is not anti-Americanism. Baudrillard loves America, in the way that schoolchildren love snowstorms. It is the alibi for his truancy. Baudrillard has rendered a great service, a service that no anti-American intellectual could have rendered, to which he owes his place in the intellectual firmament: he frees people from the task of taking America seriously.

I THOUGHT I DETECTED A BAUdrillardian program in Brenner's book, but then he confirmed it, in *The New York Times*. At a shoot on Ellis Island, in which he prevailed on a bunch of chic Jews to stand in a white maze in the rain, Brenner recited Baudrillard to the tickled correspondent: "*Il n'y a pas d'Amérique. Il n'y a qu'un spectacle de l'Amérique.*" So, too, there is no American Jewish life, there is only the spectacle of American Jewish life. The humanism in Brenner's photographs is, how shall I say, not real. It is only a genial cynicism. Of the great and homely exertions of American Jewry, he has captured nothing. Never mind. No damage done. The challah will still get baked. *Il n'y a pas de pensée dans Baudrillard. Il n'y a qu'un spectacle de pensée dans Baudrillard.* And my cousin, off camera, is busy with the rich, incontrovertible reality to which we children fell heir.

LEON WIESELTIER

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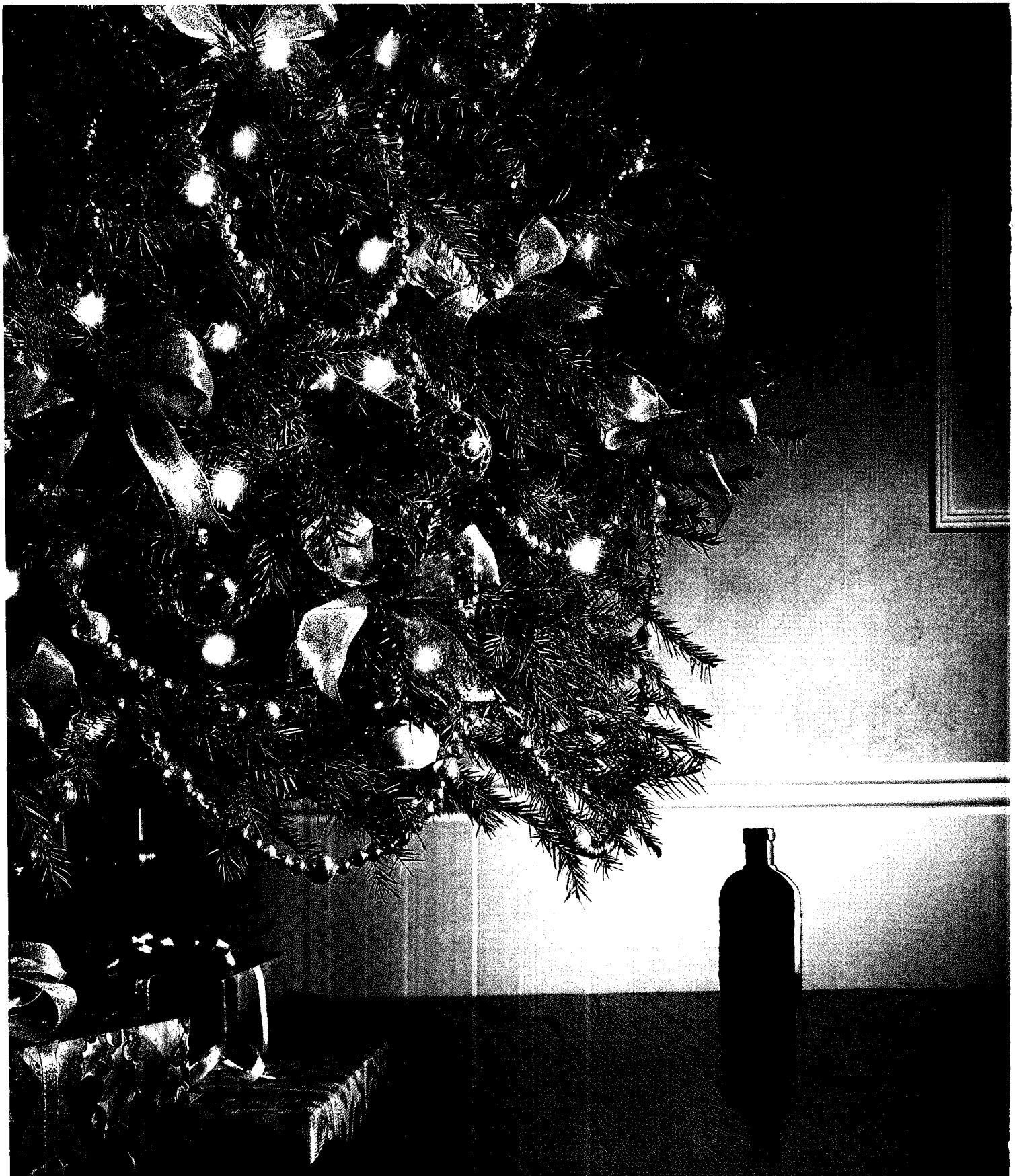

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